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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
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3 UNITED STATES OF AMERICA,

4 v.

23 Cr. 490 (SHS)

5 ROBERT MENENDEZ,
6 WAEL HANA, a/k/a "Will Hana,"
and FRED DAIBES,

7 Defendants.

Trial

8 -----x

9 New York, N.Y.
10 July 8, 2024
9:30 a.m.

11
12 Before:

13 HON. SIDNEY H. STEIN,

14 District Judge
15 -and a Jury-

16 APPEARANCES

17 DAMIAN WILLIAMS

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Southern District of New York

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Also Present:
Marwan Abdel-Rahman, Interpreter (Arabic)
Rodina Mikhail, Interpreter (Arabic)

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(Trial resumed; jury not present)

THE COURT: Good morning. We have a number of matters to cover. I'll just deal with the things that have come across in the last 36 hours or so, including at 8 a.m. this morning.

I think it's appropriate that I add the jury charge that the government has requested regarding Daibes to reflect that Daibes was released on bail as per the parties' stipulation. I think that's appropriate.

I'm going to use the jury verdict form submitted by the government with the addition that I want or the change I want 12 lines, rather than simply a signature by the foreperson. Just 12 lines that each juror will sign.

Now, I have a letter from Ms. Collart at 3 p.m. yesterday, not filed. I see no reason why it shouldn't be filed publicly. So I'm directing Ms. Collart to file it publicly, assuming there is no objection.

Really, Employee Number 2 hasn't gotten a visa for I don't know why, nobody says why he hasn't been able to get a visa. Apparently it was approved in June. And the request of Mr. Hana's attorneys is to take his testimony by audio visual. They call it a Rule 15 deposition. I don't think it's a Rule 15 deposition. I simply think it's testimony taken remotely.

So, I don't know what the position of government is on that except for a single reference in the letter that says the

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1 government opposes it. Let me hear.

2 MR. RICHENTHAL: We do.

3 THE COURT: I should say also, I think I said last
4 week that my general rule is that if you don't have a witness,
5 you rest. That really is an overstatement. Obviously I'm
6 going to make whatever accommodations I can to have a witness
7 here. At some point, though, we just can't wait around.

8 Government, speak to me. Hana wants to put on the
9 witness that I said could come on to testify, but he hasn't
10 gotten his visa yet.

11 MR. RICHENTHAL: We don't know why this individual has
12 not gotten his visa. We've made our best efforts to assist.
13 We obviously don't control the State Department.

14 Our position, which Ms. Collart I think accurately
15 described in her letter, is we do oppose video testimony for
16 this witness. We think this is the type of witness that needs
17 to be subject to cross-examination. He works for the Egyptian
18 government, there are potential bias issues, there are
19 potential other issues. We have been consistent with these
20 witnesses from the beginning.

21 THE COURT: Wouldn't you be able to cross-examine him?

22 MR. RICHENTHAL: Certainly we can. In my experience,
23 video testimony, I mean live video testimony, at best, is
24 difficult. It is far more challenging I think for the jury to
25 judge credibility on a video screen without the human dynamic

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1 in the courtroom. That gives us concern, so we've been
2 consistent about these witnesses.

3 Now let's be clear. It is true we've consented to
4 video for other witnesses. We're trying to be witness-specific
5 here, not just take an across-the-board position. But this is
6 a witness who we think opposition is appropriate.

7 THE COURT: Let me hear from Mr. Hana's attorneys.

8 MR. LUSTBERG: Your Honor, I really don't have a lot
9 to add. This Court considered a motion by the government to
10 preclude all of our, basically all of our witnesses. You
11 allowed some limited witnesses, one of them testified. This is
12 the other one.

13 This is not a situation where we've been dilatory. As
14 you noted, this gentleman got approved for a visa on June 10.
15 I know that the Department of Justice does not control the
16 State Department. I also agree that members of the prosecution
17 team did make efforts to assist us in this regard, but those
18 failed.

19 This is a matter that's within the control of the
20 United States of America, which is our adverse party here, and
21 they have not permitted our client, our witness to appear. And
22 it is the government, the government, qua government, the whole
23 thing.

24 THE COURT: No, but this prosecution team hasn't
25 stopped it in any way.

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1 MR. LUSTBERG: Not in any way.

2 THE COURT: In fact, you indicated that Ms. Clark has
3 been assisting I believe.

4 MR. LUSTBERG: That's absolutely correct, your Honor.
5 So I'm not blaming them. But on the other hand, government is
6 the government. And somehow our witness isn't here. We don't
7 know the reason why, once the visa was approved, it wasn't
8 issued, which seems to be providing a piece of paper. Seemed
9 like progress was being made.

10 We are not, your Honor, just to be clear, asking for
11 any kind of adjournment. We heard your Honor loud and clear.
12 So, it was with that in mind that we requested an opportunity,
13 assuming we could make the necessary technological
14 arrangements, which hopefully we can this morning, to have
15 Dr. Sayed appear.

16 THE COURT: Is he available now?

17 MR. LUSTBERG: Yes.

18 THE COURT: What's the difference in time?

19 MR. LUSTBERG: It doesn't matter. He's available.
20 Seven hours. We spoke to him this morning, he's available,
21 we'll make it happen.

22 You should note one other thing Mr. Richenthal's point
23 about difficulties of cross-examination as well, we'll need an
24 interpreter for him, but we've spoken to the interpreters about
25 that and that can be done.

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1 MR. RICHENTHAL: I don't think it changes materially
2 what we're talking about. But just for the record, there is a
3 distinction as we understand it between approved and issued.
4 Approved is the final step prior to a screening interview.
5 Various visa applicants are subject to screening interviews. I
6 think this applicant has been rejected for a visa in the past.
7 I can't speak to whether there is issues with perceived
8 veracity. This is one of the issue concerns we have. When we
9 say it is approved, that's technically correct, but it doesn't
10 mean it can be imminently issued.

11 THE COURT: I understand. I thought the approval was
12 back in June.

13 MR. LUSTBERG: That approval did occur after an
14 interview, so it was further along in the process.

15 THE COURT: This is what I'm going to do. I'm not
16 going to adjourn the trial here. This is the beginning of the
17 ninth week of the trial, the eighth week of testimony.
18 Everyone has seen the jury, you know, wants to conclude its
19 business here.

20 If it can be done technologically, and I've spoken to
21 the circuit executive, we're going to do it. But only if it
22 can be done today. Somebody from the audio visual department
23 has already come up and is here. Who is that?

24 Will? Now, do you know who to speak to on the defense
25 side, Will, to set this up? Mr. Lustberg who is right there.

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1 He is standing up. Deal with him. If it can be done, we're
2 going to do it today.

3 I propose 11 o'clock our time. The jury is supposed
4 to be in at 10:30, that will give them a little time.
5 11 o'clock our time.

6 What's important, just so everybody knows, is that
7 Dr. Sayed can see the jury, and that the jury can see
8 Dr. Sayed, and that the connection is such that he can easily
9 be heard, especially with the issue of an interpreter here. So
10 it has to be clear, that he can see everybody -- that he can
11 see the jury and the jury can see him and the transmission has
12 to be clear. That's the only circumstances in which I'm going
13 to allow it. If that can't be done, we're not going to have
14 it. All right.

15 Will, if you'll talk to Mr. Lustberg or his designee,
16 we'll get that moving.

17 MR. LUSTBERG: It will be my designee, Judge, because
18 this is way over my head.

19 THE COURT: It will have to be something facing the
20 jury. A big screen facing the jury.

21 MS. COLLART: Understood, your Honor.

22 MR. JARRETT: The image would appear on the jury's
23 screens. Not a large screen.

24 THE COURT: Thank you. I'm not up to date on the
25 technology. Thank you.

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1 By ECF 501, reconsideration of my determination that
2 the years since 2019 are relevant for whether IS EG Halal is a
3 viable entity.

4 I had earlier held for that witness, I forget which
5 number he is, that he was precluded on the grounds that he did
6 not have testimony relevant to 2019 or the months thereafter.
7 I do not find it is relevant as to whether or not IS EG Halal
8 has been a viable or thriving entity in any event. The defense
9 already has some of that in evidence because we had the witness
10 from Latin America talk about the various offices that IS EG
11 Halal has. But, I'm adhering to my prior determination that
12 that witness was precluded.

13 I have a submission from 8:30 last night, it's ECF
14 502, the government is seeking preclusion on the summations of
15 four areas, I don't think there is any issue -- or five areas.
16 Each of the government's positions is correct.

17 No personal stories or vouching for your clients. I
18 think quoting from, as I say, famous people is unnecessary.
19 And to the extent somebody like Dr. Martin Luther King, it adds
20 an element that's not relevant here.

21 The consequences of conviction or whether or not it's
22 fair for the government to do what the government did, all of
23 that is out of bounds.

24 The government is correct, again, in regard to Mr. De
25 Castro's opening there, inferences are certainly permissible.

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1 As a matter of fact, that's what a lot of the charges talk
2 about. They can't make guesses, but what's important is they
3 have to decide on the basis of the evidence or lack of
4 evidence, but inferences certainly can be used.

5 Certain investigative techniques, again, I've talked,
6 I've issued several rulings on that. That's not for the jury.
7 The jury determination is whether the government has proven its
8 case beyond a reasonable doubt. And law enforcement techniques
9 used is not relevant. So, in essence I'm granting the
10 government's requests there. That's in 502.

11 MR. LUSTBERG: Judge, if I might. I think there was
12 also part of that application was to preclude something I said
13 in my opening which had to do with, so the government has
14 argued, as you know, that Mr. Hana was a failed businessman,
15 and I argued that it was a good thing that he could pick
16 himself up by his bootstraps and succeed. This wasn't meant to
17 be a big commentary on American success stories, but if the
18 government's going to argue that he didn't deserve this
19 contract because he was a failed businessman, I should be able
20 to argue.

21 THE COURT: Let's see if the government is going to
22 argue that. I assume they're not.

23 MR. RICHENTHAL: We might well say he is a failed
24 businessman. Our preclusion was not to preclude Mr. Lustberg
25 from making factual assertions about his client. What

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1 Mr. Lustberg did was paired factual assertions with a broader
2 statement about American values and the prosecution's unfair.
3 That's our concern. If he wants to argue Mr. Hana was
4 qualified, he can obviously argue Mr. Hana is qualified. What
5 he shouldn't say is he was qualified and therefore this
6 prosecution is un-American or he was qualified and this is a
7 Horatio Alger story and the jury should acquit him. It is the
8 second part.

9 MR. LUSTBERG: I will not argue that the prosecution
10 was unfair, your Honor.

11 MR. FEE: I'm sorry, I think this is unnecessary but
12 just to state the obvious, we are going to refer to techniques
13 that the government's used to point out the lack of evidence
14 arising from them.

15 THE COURT: That's all right. But you can't do they
16 should have done this and they didn't do that. You can talk
17 about what they did do, and how that's not adequate in your
18 view.

19 MR. FEE: Yes, your Honor.

20 THE COURT: All right. Now, let's do the charge.
21 We'll do it until 10:30 or probably around quarter of 11, we'll
22 see. Hopefully the jury will be in by then and we'll see where
23 we are on the technological aspects.

24 In terms of the charge, what I think is important is
25 if the parties tell me what they think is important here, or

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1 really what their concerns are. That's the way to handle this,
2 it seems to me.

3 Why don't we start with the 8 a.m. submission of the
4 government which I've only had an opportunity to skim. And
5 it's saying that the multiple conspiracy charge, they think
6 it's not warranted, but if it is given, it should be revised.

7 Government, why don't you tell me, just so it's clear
8 to the defense and to the Court what your argument is and let
9 me turn to the multiple conspiracies charge that I do have in
10 the drafts that you received.

11 MR. RICHENTHAL: I'll start with why we don't think
12 it's warranted, although I take it from the Court's remarks you
13 may be more interested in why we think it should be revised.

14 THE COURT: Correct.

15 MR. RICHENTHAL: I'll briefly say why it's not
16 warranted and I'll shift.

17 We don't think it's warranted because, as the Second
18 Circuit has made clear going back actually for decades, it is
19 not warranted by the mere fact there are different phases of an
20 operation, different participants, different shifts in
21 emphasis, different shifts in locations. That's not what a
22 multiple conspiracy is about. And we just don't think that the
23 factual predicate here is met.

24 I will shift to why we think it should be revised.
25 Although I am happy to expand one what I just said if the Court

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1 would like. Why should it be revised.

2 THE COURT: Go ahead. I think it should be multiple
3 conspiracy, but I want to hear your best argument why it should
4 not be.

5 MR. RICHENTHAL: The best argument here is, at most,
6 meaning trying to draw inferences for this purpose in the
7 defendants' favor, what occurred in the record in this case,
8 meaning the evidence before the jury, not extra record things,
9 are, is a single conspiracy with Mr. Menendez at the center
10 with Mr. Hana and Mr. Daibes bribing him to achieve multiple
11 ends.

12 Now, I did just say to achieve multiple ends. But our
13 understanding of the law is that in and of itself is not
14 sufficient to warrant a multiple conspiracy charge. Nor is it
15 sufficient if those ends were achieved over time, or if the
16 ends were more important to certain conspirators and not
17 others.

18 So, for example, there is the case that talks about
19 how goals, plural, need not be congruent, meaning need not be
20 identical. Those facts are facts or at least the evidence can
21 give rise to those facts. But those are not sufficient. As we
22 understand it, it I think the *Dawkins* case is a good example of
23 this. *Dawkins* is from 2021. What a multiple conspiracy
24 charge, indeed multiple conspiracies are about are independent
25 networks operating separately. That's a near verbatim quote

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1 from *Dawkins* which is quoting either *Berger* or another case.
2 It's in our letter.

3 Our view is the record before the jury does not show
4 independent networks. It may again, as I said, show shifts in
5 emphasis. It certainly I think shows temporal changes, that is
6 phases of operation as facts developed in the world. But it
7 was always to bribe Mr. Menendez. It always involved Mr. Hana
8 and Mr. Daibes and it involved overlapping participants,
9 overlapping methods, and overlapping goals.

10 Even the goals themselves, to the extent they're
11 discrete, occurred at the same time or substantially the same
12 time. Our view, that's not just independent networks.

13 Now the defense can argue there was no conspiracy. Of
14 course. But we don't think there is a sufficient factual
15 predicate in the record for them to argue there was independent
16 networks of conspiracies, that is, independent conspiracies. I
17 can talk more specifically about that.

18 I'll note finally, I don't think this fact is
19 dispositive, but I think it bears on the analysis. There is no
20 allegation, indeed, I don't think we expect the defense will
21 argue in summation, that the goals here were at cross purposes
22 or inconsistent. In fact, the record's to the contrary, just
23 to use IS EG Halal as an example. IS EG Halal, once the
24 monopoly came into place, was then used to pay bribes. So it's
25 granted by the Egyptian government. Mr. Menendez is alleged to

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1 taking actions to advance the agenda of the Egyptian
2 government. That includes trying to keep the monopoly in
3 place. The monopoly profits are then used to funnel back to
4 Mr. Menendez or Nadine. So that's certainly not inconsistent.

5 Obviously Qatar is not inconsistent either with taking
6 actions for Egypt. And the various schemes to seek to
7 interfere with criminal prosecutions are not inconsistent.

8 Again, as I've said, the lack of inconsistency is not
9 in and itself mean there is not multiple conspiracies. That's
10 off the table. What we really have at most is multiple
11 non-incongruent goals achieved over time in overlapping ways
12 with one man at the center. That doesn't seem like independent
13 networks.

14 This is a confusing and lengthy charge. We think it
15 should be only given when it's warranted, and in our view it's
16 not warranted.

17 MR. WEITZMAN: Your Honor, the government's proposed
18 edits make it more confusing and twice as long as it was when
19 you proposed it. It is a warranted charge. There is ample
20 inferences to be drawn that there is no hub and spoke. "Spoke"
21 words he didn't say spoke conspiracy here. Having someone at
22 the hub and no spoke combining the objectives of the parties
23 warrants a multiple conspiracy charge for the same reason we
24 moved to dismiss on a multiple conspiracies theory.

25 The fact that Mr. Daibes' counsel didn't have to

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1 cross-examine most of the witnesses I think speaks amply about
2 why he doesn't at least believe he's part of multiple spokes of
3 the charged offense. Similarly with Will Hana.

4 I acknowledge that under the government's theory
5 Senator Menendez is certainly a hub or at least Nadine is the
6 hub and maybe Senator Menendez is on the side of Nadine.

7 But, this is certainly a warranted charge, and the
8 case law, none of the cases that the government cites says it
9 should not be given. It is certainly within your Honor's
10 discretion to give, and I think your Honor is exercising that
11 discretion wisely.

12 I will keep it short, even though the government has
13 put in a letter we did not have an opportunity to respond to.
14 I think your instruction was appropriate, and as drafted, the
15 right instruction.

16 THE COURT: Thank you.

17 MR. RICHENTHAL: I'm happy to respond to that or to
18 shift to how we think it should be revised.

19 THE COURT: I'm going to give it. The question is the
20 revision. Let me look at your revisions here. Because I think
21 there is something to what Mr. Weitzman says about the length
22 of your revision makes it somewhat more convoluted.

23 MR. WEITZMAN: From our position, we're fine with
24 their edits on page 1 and 2 of their rider. It is the last
25 paragraph, the full --

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1 THE COURT: What I'm looking at is the Exhibit B, in
2 other words, where they've redlined my charge. Is that, when
3 you say 1 and 2, is that what you're referring to?

4 MR. WEITZMAN: Yes, your Honor. So the edits, the one
5 edit on page 1 that we don't agree with is the deletion of and
6 15 -- Count 15 should be included.

7 The other edits we're fine with on page 1 and page 2.
8 We're fine with the first paragraph they edited in full
9 starting with "In determining whether a series of events." I'm
10 just speaking on behalf of Senator Menendez of course. It is
11 the next page I think is getting to be redundant and confusing,
12 and we would propose you delete that full paragraph.

13 THE COURT: Let me look at it.

14 MR. RICHENTHAL: If I may briefly, I wanted to make a
15 broader point.

16 We still maintain Count 15 plainly is not the multiple
17 conspiracy charge. Being a public official operating in Egypt
18 is a status offense. It is a continuing offense over time.
19 Once one is in that status, one is in that status.

20 I don't understand how there could ever be multiple
21 conspiracies to put one in that status at same time. Either
22 one is either in the status or one is not.

23 Whatever the Court thinks about the other counts, and
24 obviously we respect the Court's decision, in our view the jury
25 wouldn't even know what to do with multiple conspiracies as to

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1 make him an agent. Either he is an agent or he isn't an agent.
2 That is the same goal. There are no multiple goals.

3 MR. WEITZMAN: Your Honor, our response to that is
4 this is a conspiracy count. It's not a status. It is a
5 conspiracy to violate a statute. Whether it's actualized or
6 not is not the point, which I think is Mr. Richenthal's
7 argument.

8 The reason it's appropriate is because all of this
9 conduct is included in the overarching conspiracy counts that
10 they've charged earlier. There is a way to look at the
11 evidence where Count 15, perhaps some people have one goal,
12 which might be to make someone an agent of the Egyptian
13 government, and others may not have that goal, but might have a
14 different objective.

15 So I think it's important to keep Count 15 in the
16 instruction.

17 MR. RICHENTHAL: Just to be clear, I don't mean to be
18 doing ping pong on this. Mr. Daibes is not in Count 15. So
19 the argument that they had different goals just doesn't make
20 any sense. It is Mr. Hana and Mr. Menendez and his wife.

21 THE COURT: We just had Egypt too.

22 MR. RICHENTHAL: Exactly, your Honor. It is a single
23 country, and Mr. Daibes is not in the count. I don't think
24 there is a reasonable reading of the record that the jury could
25 find multiple networks among Mr. Hana, Ms. Menendez, and

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1 Mr. Menendez with respect to a single country.

2 THE COURT: I see that. Let me take a look.

3 This is what I'm going to do. I think the government
4 is right. We'll take 15 out of charge 84 on multiple
5 conspiracies. So that's one.

6 I will add in the changes that are on page 1 of
7 Exhibit B as well as all of page 2 of Exhibit B. That is ECF
8 504-2.

9 That's on multiple conspiracies.

10 MR. RICHENTHAL: Your Honor, if I may be heard. There
11 is a single sentence on page 3 which, I think given the record,
12 is reasonably apparent why it's important to us, and frankly
13 reasonably apparent why the defense doesn't like it, as is
14 their right.

15 THE COURT: Just a moment. Yes.

16 MR. RICHENTHAL: That's the sentence beginning the
17 participants' goals. That language.

18 THE COURT: Let me find it.

19 MR. RICHENTHAL: The final sentence of the redlined
20 paragraph.

21 THE COURT: Yes, I see it.

22 MR. RICHENTHAL: On page 3. That sentence is nearly
23 verbatim from *Beech-Nut Nutrition Corp.*, a Second Circuit case
24 from 1989.

25 THE COURT: I know it.

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1 MR. RICHENTHAL: We have no objection with the Court
2 literally using the language from the Second Circuit if it
3 wishes. The only change we made, is our view is that
4 "congruent" may be a word the lay jury does not understand.
5 And therefore as Judge Engelmayer did, and I think other judges
6 did -- it may not have been Judge Engelmayer -- we suggested
7 the word "coincide exactly."

8 The mere existence of multiple goals is not itself
9 multiple conspiracies. We plainly have multiple goals here.
10 That's why the defense doesn't like this sentence, as is their
11 right. But the jury needs to understand that that fact alone
12 is not dispositive. They can consider it, of course. But it
13 does not in and of itself demonstrate multiple conspiracies.

14 MR. WEITZMAN: Your Honor.

15 THE COURT: Just a moment. Yes, sir.

16 MR. WEITZMAN: I think the problem with the sentence
17 is that it is confusing when you add in the portion, for
18 example, that says "So long as their goals are not at cross
19 purposes." It sets up a standard that everybody can have
20 different goals, different objectives, different conspiracies,
21 so long as they're rowing in the same direction.

22 THE COURT: Isn't that true?

23 MR. WEITZMAN: I don't think that's correct. I
24 think -- Mr. Richenthal I know wants the last word, but I am
25 going to insist that I finish.

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1 THE COURT: Neither of us are stopping you, sir.

2 MR. WEITZMAN: I don't think that's correct. I think
3 that the entire purpose of multiple conspiracies is the hub and
4 spoke issue. If, for instance, Mr. Daibes had one conspiracy
5 involving, let's say, Sellinger, and Mr. Hana had a different
6 conspiracy involving Egypt, and neither knew about the other,
7 or joined with the other, they may not be at cross purposes,
8 but they certainly are not in the same overarching conspiracy.

9 So the quote from a 1989 case I don't think is the law
10 of the land today where multiple conspiracies is.

11 MR. RICHENTHAL: So, I don't get the last word, but on
12 this, but for the Supreme Court of the United States, the
13 Second Circuit does. This is the law in this circuit. It is
14 precedential, it is binding. Mr. Weitzman doesn't have to like
15 it. We're not writing the law here. That is the law. It is
16 critical in this case that the jury understand it.

17 We would have no objection to the Court literally
18 quoting the case. Our suggestion to change language was to
19 simply make it more comprehensible to the lay jury.

20 MR. WEITZMAN: It is hard to understand what multiple
21 conspiracies is if this language stands.

22 THE COURT: No, that is not true. Because their
23 goals, it's just their goals could be different, but they can't
24 be at cross purposes.

25 MR. WEITZMAN: So if they're not at cross purposes,

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1 there is no multiple conspiracies is the way this language
2 reads. So long as they're not inconsistent undermining each
3 other, they're not multiple conspiracies. And that seems very
4 hard to square with the law.

5 MR. SOLANO: Your Honor, if I may.

6 THE COURT: Just a moment. Yes.

7 MR. SOLANO: I have a slightly different point to
8 make, which is I'm not going to argue with the *Beech-Nut*
9 application to this case, but that the gist of it, what the
10 prosecutors are arguing for is already covered by your Honor's
11 addition to which Mr. Weitzman has agreed to on page 2, where
12 you instruct the jury that "In determining whether a series of
13 events constitute a single conspiracy or a separate and
14 unrelated conspiracy or a conspiracies, you should consider
15 whether there is a common goal or goals among the alleged
16 co-conspirators." And that should be sufficient to address
17 this additional point being made currently.

18 MR. RICHENTHAL: I'm not a logic major, but that's not
19 the case as a matter of logic. The first statement that
20 Mr. Solano is referring to is asking the jury consider whether
21 it is the same goal.

22 THE COURT: This is what I'm going to do. I'm going
23 to add the language from *Beech-Nut*. I agree with the
24 government that "congruent" may be a step too far. So
25 "coincide" is fine, but the English doesn't track in what I was

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1 given. It says "The participants' goals need not be coincide."
2 So, I need to strike the word "be." So it will read "The
3 participants' goals need not coincide exactly for a single
4 conspiracy to exist, so long as the goals are not at cross
5 purposes and co-conspirators need not agree in all of the
6 details of conspiracy where the essential nature of the plan is
7 agreed upon."

8 That's language from *Beech-Nut*. That will be a
9 separate paragraph after the addition I have on the bottom of
10 page 2.

11 MR. RICHENTHAL: We would also note there is a
12 references to paragraph 15 at the very end of the instruction.
13 I understand the Court intends to remove all the references.

14 THE COURT: 15 is stricken.

15 MR. RICHENTHAL: I wanted to advise the Court it is
16 also at the very end. Not just at the beginning.

17 THE COURT: Thank you.

18 Let's turn to paragraph 2 of the government.
19 Unanimity of theory. Let me turn to it. All right,
20 government.

21 MR. RICHENTHAL: On this instruction, we don't think
22 this is required either. Although that's not our principal
23 point, and we will concede that the law in this area frankly is
24 a little messy.

25 Just for the record, the reason we don't think it's

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1 required is a number of cases, including *United States v.*
2 *Martha Stewart*, which talks about the jury doesn't have been to
3 be unanimous about the means through which a crime was
4 committed.

5 Our principal issue here is the instruction -- I don't
6 think this was the Court's intention -- appears to take a
7 position as to whether it's one scheme or two schemes. The
8 government's view, and we briefed this prior to trial, is it is
9 just one scheme. We don't think the Court needs to take that
10 view either. We think there should be a revision that
11 basically says, in sum, ladies and gentlemen, the government
12 says, it is one scheme, the defense says it's two. If you find
13 it's one and you find the elements proven, that's fine. If you
14 find it's two, you have to either be unanimous as to one
15 version or the other or both. Just a neutral instruction.

16 We think there is more than one way to do that, and
17 this I assume will not be objectionable. One way is to simply
18 say defendants engaged in bribery with two goals. I've just
19 not used the word "scheme." That's all. But there is probably
20 more than one way with respect to verbiage to avoid the Court
21 taking a position with a contested factual matter.

22 THE COURT: What about this. In this count,
23 defendants -- the third sentence. Rather than the government
24 has alleged that the defendants engaged in two bribery schemes,
25 in this count defendants contend that the government's proof

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1 supports the existence of two bribery schemes.

2 MR. RICHENTHAL: I agree that would be a neutral
3 instruction.

4 THE COURT: Mr. Weitzman, I think that does it.

5 MR. WEITZMAN: This is not a count in which our client
6 is charged, but I think the verbiage is a bit too aggressive in
7 saying the defendants contend that the government's proof
8 supports two bribery schemes. That seems to be an
9 acknowledgment that the government's proof suffices, and I'm
10 not sure.

11 THE COURT: No. It says defendants contend that the
12 government's proof supports --

13 MR. WEITZMAN: I would say the government has alleged
14 two bribery schemes, rather than talking about government's
15 proof.

16 THE COURT: That's how I started it. That's how I
17 have it, but you heard government's position.

18 MR. WEITZMAN: The defendants, I would put it the
19 defendants contend that the government has alleged or charged
20 two bribery schemes, rather than the government's proofs
21 supports two bribery schemes.

22 MR. RICHENTHAL: The Court can hear from anyone it
23 wishes. Mr. Menendez has no standing as to this instruction.
24 He's not in this count. It is Mr. Hana and Mr. Daibes.

25 THE COURT: Mr. Weitzman, what's that language again?

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1 MR. WEITZMAN: I would suggest the defendants contend
2 that the government has charged two bribery schemes.

3 MR. RICHENTHAL: The problem with that, your Honor, is
4 juries don't consider what we charged. They consider the
5 evidence. So the question is whether the evidence shows one or
6 two, or I suppose in the defendants' preferred version of the
7 world, zero. So charge is the wrong language.

8 THE COURT: Just a moment.

9 MR. RICHENTHAL: I would also say if the instruction
10 will say what the defendants believe the proof is, it should
11 say what we believe, which again, is there is one scheme.

12 THE COURT: This is what I'm going to do. That third
13 sentence will read: "In this count, the defendants contend
14 that the government has alleged that the defendants engaged in
15 two bribery schemes." And then go on.

16 The next sentence will read, it is a new sentence:
17 "The government contends that the defendants engaged in a
18 single bribery scheme."

19 MR. RICHENTHAL: That's fine with the government, your
20 Honor.

21 THE COURT: Defense?

22 MR. SOLANO: Yes, that's acceptable, your Honor.

23 MR. AGATA: Yes, your Honor.

24 THE COURT: The third sentence will read, "In this
25 count, the defendants contend that the government" and then you

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1 pick up the sentence "has alleged that the defendants engaged
2 in two bribery schemes." The rest of that sentence. Then we
3 add a sentence, "The government contends that the defendants
4 engaged in a single bribery scheme." And then it goes on "you
5 cannot convict." All right.

6 Proposed 219 instructions.

7 MR. RICHENTHAL: Just for clarity, I take it the Court
8 would make the same edits as to the second unanimity
9 instruction that matches. That's instruction 53 on page 78.

10 THE COURT: Thank you. We will. Yes.

11 Proposed 219 instruction. What are the positions of
12 the parties? Yes, I did use that guidance, and yes, it's not
13 in and of itself the law. But the parties used the guidance as
14 well.

15 Have you talked to each other about this? It just
16 came in this morning at 8 o'clock.

17 MR. RICHENTHAL: We have not talked about it this
18 morning. Our effort here was not frankly to change the
19 substantive meaning. It was to avoid a misinterpretation in
20 our view as to what the meaning is. Indeed, our first edit is
21 literally to combine two sentences without changing the
22 meaning.

23 THE COURT: Just to talk to each other now off the
24 record to see if the parties agree. I think the idea everyone
25 agrees on the thrust.

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(Counsel conferring)

THE COURT: Counsel, why don't we come back to that later when you've had a chance to talk to each other. I'm sure the parties will remind me. So let's go to the last in the government's point which is the obstruction of justice should be revised.

Government?

MR. RICHENTHAL: The issue here in our view is actually reasonably narrow. We understood the Court to be explaining to the jury that an act of obstruction requires acts, knowledge or belief it will influence the grand jury.

As drafted it appeared to tell the jury you literally cannot consider an act for any purpose, unless it achieves acts. Which is not I assume what the Court intended.

To put a fine point on it, under this instruction, the Court I think is intending for the jury to understand that the mere interaction with the prosecutor, without more, is not an obstructive act. That is, Mr. Menendez must intend to influence the grand jury. We don't quibble with that proposition of law.

But the jury is entitled to consider Mr. Menendez's interactions with prosecutors through counsel, or for that matter, any other third party, for any other legitimate purpose such as consciousness of guilt about the scheme.

So our worry here is even though this instruction is

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1 within the obstruction of justice charge, read on its all
2 fours, the sentence on its own, it seems to tell the jury they
3 literally cannot consider these interactions for any purpose,
4 unless they find they were intended to influence the grand
5 jury, which we don't think is, we assume, what the Court
6 intended and not our understanding of the law.

7 We've proposed an instruction that I think
8 accomplishes what the Court intended. It is not designed to
9 alter the meaning. And again, there is probably more than one
10 way with respect to verbiage to get there.

11 MR. WEITZMAN: Your Honor, I think there is a simpler
12 way to clean this up. Which is to in the proposed language
13 that you have, just add the word --

14 THE COURT: Let me turn to it. Yes, sir.

15 MR. WEITZMAN: Your second paragraph in charge 66 I
16 would just add a few words. You wrote "A defendant's
17 interactions with third parties, including prosecutors, are
18 therefore relevant." And I would add to the obstruction charge
19 "or charges, only if the defendant knew" and continued the rest
20 of the sentence. I think the addition that they are asking
21 for, that the interactions may be relevant for other purposes,
22 goes too far in inviting inferences.

23 MR. RICHENTHAL: That's also wrong, and in fact it's
24 devastatingly wrong. Here's why. The jury can consider that
25 Mr. Menendez lied to his lawyers who then passed on falsehoods

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1 to the government in considering whether there is a scheme to
2 obstruct. It is the case under your Honor's reading of the law
3 that those interactions in and of themselves cannot be deemed
4 obstruction. But they are plainly relevant to whether
5 Mr. Menendez had the requisite mental state.

6 Imagine a different case in which the defendant lied
7 to the FBI agent on day one, and gave documents to the grand
8 jury on day two. Under Mr. Weitzman's instruction, the jury
9 could not consider what happened on day one. This is on all
10 fours with that concept. The jury can consider it. It is
11 relevant. It just isn't in and of itself, that is without
12 more, obstruction.

13 MR. WEITZMAN: I think the issue, your Honor --

14 THE COURT: Hang on.

15 MR. WEITZMAN: I think the issue is that what they're
16 arguing is inconsistent with the Supreme Court authority and
17 Second Circuit authority that your Honor's already discussed at
18 length including the *Schwarz* decision. The relevance of these
19 interactions.

20 THE COURT: That goes to knowledge. That's the issue
21 with *Schwarz*, seems to me.

22 MR. WEITZMAN: Well, this sentence does go to
23 knowledge. That's correct. This sentence goes to knowledge.

24 THE COURT: I'm supporting where you're going I think.
25 Go ahead.

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1 MR. WEITZMAN: So, I think it just goes too broad in
2 suggesting that they can consider all this evidence for other
3 purposes. The question is whether they've satisfied the
4 knowledge requirement and they can consider the evidence to the
5 extent it satisfies the knowledge requirement. The knowledge
6 requirement has to be to affect the judicial or grand jury
7 proceeding. I think --

8 THE COURT: I think that is *Aguilar* and *Schwarz*.

9 MR. RICHENTHAL: Let me try a different way. If we
10 are to stand up in summation and rebuttal and say -- which to
11 be clear, we might say -- ladies and gentlemen, one reason you
12 should know that Mr. Menendez intended to affect the grand
13 jury, that is, in other words, your Honor, consistent with
14 *Aguilar* and *Schwarz*, is that his false production of documents
15 didn't stand alone. He asked his lawyers to make substantially
16 similar false statements to the government. That is, it wasn't
17 accidental. It was intentional and it was part of a broader
18 scheme to avoid being prosecuted.

19 Our view is that statement I just made is plainly
20 supported by the evidence. The defense can disagree, that's
21 fine, but it is also plainly legally proper to make that
22 argument. But if the jury heard that argument and then read
23 this, the jury would think what I said is not true. That it
24 cannot consider.

25 THE COURT: Why? Why would they think it's not true?

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1 MR. RICHENTHAL: Because the instruction as drafted is
2 it can only consider this stuff relevant if Mr. Menendez
3 intended to affect the proceeding. But it can consider it
4 relevant, for example, for consciousness of guilt that he
5 engaged in bribery. It can consider it relevant that he had
6 the requisite mental state to try to avoid prosecution through
7 multiple avenues.

8 Now to be clear, one avenue we've charged is
9 obstruction. And lies to his lawyers, without more, are not
10 obstruction. But that doesn't make it irrelevant. It just
11 means in and of itself it isn't the crime. The word "relevant"
12 is the operative word here that's giving us such great concern.

13 MR. WEITZMAN: Your Honor, you know, the remarkable
14 thing is the extent to which they will rely on argument that
15 has no support in the evidence. This isn't a hypothetical.
16 This is contrary to the evidence. There is no evidence, there
17 is no evidence that Senator Menendez lied to his lawyers. They
18 didn't put any of that evidence in. They put four pages from
19 the PowerPoint. They can't make that argument for other
20 reasons, having nothing to do with this charge.

21 I'm lost at the suggestion they can argue that Senator
22 Menendez lied to his lawyers when they didn't introduce his
23 lawyer's statements.

24 MR. RICHENTHAL: Your Honor, it is plainly a
25 reasonable inference that Mr. Menendez, himself a lawyer, hired

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1 lawyers and told them or authorized what they would say to the
2 government. Mr. Weitzman can say there is a paucity of
3 evidence on that point. That's fine.

4 But one reason it's a reasonable inference, beyond
5 what I just said, is that the same lies were supported by his
6 wife, the same lies were supported by a conversation with
7 Mr. Uribe. The defendants can say Mr. Uribe's incredible, but
8 that's not for the defendants to decide. That's for the jury.
9 And the same lies were supported by documents that Mr. Menendez
10 produced to the grand jury. Literally the checks about the
11 purported loan.

12 The jury's entitled to consider all of that and decide
13 whether Mr. Menendez's counsel made false statements with
14 Mr. Menendez's authorization or not. That's why we're having a
15 trial. But it is not the law that we cannot argue the jury can
16 draw that inference because the defense has a response. That's
17 why we have trials.

18 MR. WEITZMAN: The number of times the government
19 objects to inferences --

20 THE COURT: Just a moment.

21 MR. RICHENTHAL: For what it's worth, I would also
22 note that *Schwarz* on page 109 refers and this is a quote, to
23 the intention "being in the defendant's mind." In other words,
24 this whole count in many ways is about what Mr. Menendez was
25 thinking.

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1 Our point, which I didn't think was controversial, is
2 we are allowed to ask the jury to consider, in considering what
3 he's thinking, what his lawyers said to the government.
4 Mr. Weitzman can respond, no, that's ridiculous, don't consider
5 it, no evidence. That's fine. He can make that argument. We
6 just don't think we should be prevented from making that
7 argument.

8 I also believe a minute ago I referenced checks. If I
9 said Mr. Menendez, I meant to say Ms. Menendez. She is the one
10 who produced the checks. But the argument is the same.

11 MR. WEITZMAN: That was what I was just about to
12 mention, which is that the distortion of the facts that we just
13 heard undermines the inferences they're trying to argue.

14 There is no evidence that Mr. Menendez provided those
15 checks. he did not provide them. Mrs. Menendez provided them.
16 There is no evidence as to where Abbe Lowell, what he said to
17 the grand jury and where he got the information from that he
18 included in the PowerPoint. He could have gotten it from
19 Mrs. Menendez. He could have gotten it from Mr. Uribe.

20 THE COURT: He was offering it, as the PowerPoint
21 says, on behalf of Mr. Menendez.

22 MR. WEITZMAN: I understand that. So to the extent
23 they want to argue a defendant's lawyers' statements can be
24 used, can be looked at, that's fine. But there is no evidence
25 for the argument that they just said they are going to make in

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1 summation, that Mr. Menendez lied to his lawyers.

2 THE COURT: Why can't they draw the inference?

3 MR. WEITZMAN: Inference based on what? Based on the
4 fact that the lawyer made a statement? I don't think you can
5 draw the inference.

6 THE COURT: Which was done on his behalf.

7 MR. WEITZMAN: That's fine. They can say it's done on
8 his behalf. But they can't say there is evidence in the
9 record, because there is none, that Senator Menendez lied.

10 THE COURT: But the -- well, let me hear.

11 MR. RICHENTHAL: This is summation. If either one of
12 my colleagues wants to make this argument, we'll make it. If
13 Mr. Weitzman wants to respond it is not a good argument, he'll
14 make it.

15 THE COURT: That seems to me it's right. It is an
16 inference to be drawn from the evidence and that's up to the
17 jury. I'm concerned about this sentence.

18 MR. WEITZMAN: I still think that the sentence is
19 accurate as written with the additions that I proposed.

20 THE COURT: And give me your addition again. Are
21 therefore relevant.

22 MR. WEITZMAN: The obstruction charge.

23 MR. RICHENTHAL: So, I know we are going back and
24 forth. That's just not true.

25 THE COURT: No, I got that point. I'm not adding

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1 that. I'm going to keep it the way it is based on my view of
2 *Schwarz and Aguilar*.

3 That handles all of the government's. Now let me see
4 where we stand in terms of the audio visual.

5 MR. RICHENTHAL: Your Honor, I can tell when I've
6 lost, but can I ask the Court to at least adopt the suggestion
7 that Mr. Weitzman said he didn't have a problem with which is
8 are only relevant to this charge? We have a substantial worry
9 the jury reading this sentence will think it can't consider the
10 interactions in this case at all.

11 THE COURT: "To this charge" is fine. I'm adding
12 "therefore relevant to this charge only if the defendant."

13 I'm told that the audio visual people need to do a
14 test, they need access to the courtroom, and they need to test
15 the connection. Do we know if at the other end Dr. Sayed is
16 available now?

17 MS. COLLART: Yes, he is, your Honor.

18 THE COURT: We'll continue for a few more moments
19 because the jury isn't here yet with the charge. Then we have
20 to take a break for the test. If the test is successful, I
21 guess what we do is I bring the jury in, ask if there is
22 another witness, I'll explain it's being done remotely. And
23 again, I repeat, only if it is a good connection where they can
24 really hear and see the witness. We'll do direct, we'll do
25 cross. I then will ask if there is another witness. I take it

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1 there is no other witness.

2 MR. LUSTBERG: No, we'll have a couple of
3 stipulations.

4 THE COURT: Stipulations, let me put that in. We'll
5 give the jury a break. I'll allocute Mr. Hana, and then
6 Mr. Hana will rest. Is that how we foresee it, Mr. Lustberg?

7 MR. LUSTBERG: Yes, your Honor.

8 MR. RICHENTHAL: Agree with one small addendum. I had
9 understood, maybe misunderstood, the Court had granted our
10 request for a brief voir dire of this witness to ensure, as we
11 put in our letter, that his knowledge of the audit in 2019 is
12 not based on hearsay.

13 THE COURT: You're very correct.

14 MR. RICHENTHAL: I don't know it will take long,
15 although I don't know exactly what he's going to say, but
16 otherwise we agree with what the Court said.

17 I will note, and this is now expanding the lens and
18 this is not disagreeing. We also have two government exhibits
19 we intend to offer in a rebuttal case. I believe they total
20 four pages. Excuse me. Two pages. That is one page each.

21 THE COURT: And have you passed them by the defense?

22 MR. RICHENTHAL: We sent them to the defense yesterday
23 by e-mail. My understanding is that they may be objecting
24 allegedly on belated notice. I would note again they're
25 literally two pages long.

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1 MR. WEITZMAN: Every time the defense tries to put in
2 evidence, there is an objection on process grounds by the
3 government, often false accusations where we've provided the
4 notice.

5 Here we asked for notice on Saturday morning of a
6 rebuttal case. They didn't provide it. They were obligated to
7 provide us the evidence they planned to introduce today on
8 Friday, on Friday by 7 p.m. under the parties' agreement. They
9 didn't provide it. They provided it to us last night at
10 9:30 p.m. while we are frantically preparing our summations.

11 What's good for the goose is good for the gander.
12 This is a process objection. They shouldn't be permitted to
13 put in the rebuttal case.

14 THE COURT: Just a moment. Is there objection on the
15 substance, what are these things? Sir, I take it it's process
16 as you say. Simply process.

17 MR. WEITZMAN: It's process.

18 THE COURT: I got it.

19 MR. RICHENTHAL: Just so the Court knows, the parties'
20 agreement did not cover this. That's just not true. I can
21 show to it to the Court if the Court would like.

22 We gave notice yesterday when we decided yesterday to
23 do it, in part based on the charge, that is the Court's charge
24 led us to conclude two pages was useful for our case. We
25 immediately e-mailed the two pages to the defense.

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1 MR. WEITZMAN: This has nothing do with the jury
2 charge. That's just false. This is in rebuttal to line
3 entries in our summary chart. That's all it is.

4 THE COURT: Let me see what they are.

5 MS. POMERANTZ: May I pass them up?

6 THE COURT: Yes. That's the only way I can see them.

7 MR. RICHENTHAL: We can also put them on the screen if
8 the Court would prefer.

9 THE COURT: Let me see the agreement of the parties.

10 MR. RICHENTHAL: I am going to have to pull it up by
11 e-mail. It's from some time ago. It has absolutely nothing to
12 do with the rebuttal case whatsoever. In any event, as I said,
13 we didn't hold these back. We got the jury charge --

14 THE COURT: You know, let me cut through it.
15 Everybody has been working assiduously here and providing the
16 Court with multiple submissions on very short notice. I don't
17 think there is any bad faith here on the part of the
18 government. It's pretty consistent with what both sides have
19 been doing. I am going to allow these two in a rebuttal case.

20 MR. WEITZMAN: Just to note, when we provided a
21 summary chart with admittedly 40 exhibits that had been
22 produced weeks prior on the Friday before the Monday or the
23 Tuesday or the Wednesday, whatever it was, it was excluded for
24 violating process.

25 THE COURT: Are you talking about 2500?

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1 MR. WEITZMAN: Yes, your Honor.

2 THE COURT: Totally different. Thank you. You made
3 the case.

4 MR. WEITZMAN: There is one more point, your Honor.
5 On June --

6 THE COURT: 2500 is completely different.

7 MR. WEITZMAN: On June 26, your Honor told the
8 government when they are moving 700 exhibits en masse they need
9 to advise the defense on what they planned to offer in
10 summation. Last night at about 9 p.m., while we are
11 frantically preparing our summation, they provided notice of
12 about a dozen or 10, whatever it is, exhibits that they plan to
13 use in summation. I think from that 700 list.

14 THE COURT: I'm sorry. Are you talking about
15 demonstrative exhibits here in summation?

16 MR. WEITZMAN: No, this is about the -- you'll recall
17 they had some clean up exhibits, as they called it. It was
18 about 600 or 700.

19 THE COURT: We've been through that.

20 MR. WEITZMAN: Your Honor said, government, tell the
21 defense which ones of those you plan to use in summation.
22 Between June 26 and yesterday at 9 p.m., they didn't say one
23 word about a single one of those documents. Last night they
24 provided it to us at 9 p.m. that they have, I don't know how
25 many, it was 8 or 10 documents that they now plan to use in

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1 their summation.

2 I think it's belated. I think they should have done
3 it when your Honor suggested it. And again, legal doctrine of
4 goose and gander.

5 MR. RICHENTHAL: The summation wasn't written.
6 Mr. Monteleoni can respond. This is not worth the Court's
7 time.

8 MR. MONTELEONI: Your Honor, we're talking about 8 or
9 10 documents, almost all of which were actually published
10 briefly to the jury. But I included this nevertheless because
11 they didn't come in through a witness. If you recall, there
12 was a discussion about could we be surprising and pulling a
13 fast one where we're now summing up on some document no one's
14 ever heard of.

15 There is maybe -- the only ones I can think of of
16 these 8 or 10 that actually weren't even seen by the jury and
17 highlighted for the jury are a single wire transfer for the
18 interstate wire, which I believe Mr. Weitzman said is in the
19 category they wouldn't object to, and three text messages about
20 the scheduling of a surgery which Mr. Weitzman put at issue.

21 THE COURT: All right. I am going to allow it.

22 Let's take a break. I don't know how long this will
23 take. Let's assume it's, Ms. Blakely, 15 minutes?

24 MR. RICHENTHAL: I don't want to overstay our welcome.
25 We do have one other thing that --

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1 THE COURT: What?

2 MR. RICHENTHAL: We noticed after Defense
3 Exhibit 1304, which is a summary chart had been moved into
4 evidence, that it contains a press release subsequent to the
5 charges in this case involving Qatar and the war in Gaza. We
6 said to the defense --

7 THE COURT: You mean the October 7, the war in Gaza
8 which commenced on or about October 7?

9 MR. RICHENTHAL: Yes, your Honor.

10 THE COURT: I don't see how that can come in.

11 MR. RICHENTHAL: That's our view. We advised the
12 defense, we understand your Honor let in press releases for
13 context. That's the direct word. We did not understand that
14 context to include the war in Gaza, which began after the
15 charges in this case.

16 THE COURT: I quite agree. What's the position?

17 MR. WEITZMAN: Your Honor, we're fine with that.
18 We've offered -- hold on a second. We've told the government
19 we'll redact any references to the Gaza war in the press
20 release. It will just say thanking Qatar for its humanitarian
21 aid without reference to Gaza.

22 The government's position is that doesn't go far
23 enough. They want to strike the entry from the summary chart
24 and the underlying exhibit, which has already been moved into
25 evidence, and not include any reference to --

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1 THE COURT: What we're talking about with the Gaza
2 reference is already part of the evidence?

3 MR. WEITZMAN: Correct, your Honor, it's --

4 THE COURT: Okay.

5 MR. WEITZMAN: We're willing to redact the words in
6 Gaza.

7 THE COURT: I got it.

8 MR. RICHENTHAL: It wasn't published. The jury
9 doesn't know. It is a November 12, 2023, press release.

10 THE COURT: If it's been moved into evidence already,
11 I'm keeping it. Redact Gaza.

12 15 minutes.

13 MR. SOLANO: Your Honor, we just had one thing. We
14 could do it after the break, but so it's not lost. We did have
15 some very minor comments in response to your Honor's jury
16 charge that we can raise after the break at some point. But as
17 part of the jury charge conference, we do have some objections
18 we wanted to note.

19 THE COURT: Thank you.

20 (Recess)

21 THE COURT: I'm informed the audio visual set up has
22 been completed, and actually the last juror has just arrived.
23 What I propose we do, given the fact that the government has
24 asked to voir dire this witness, Mr. Lustberg, is to have my
25 deputy swear him in, to allow him to do the voir dire without

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1 the jury, and then we'll proceed accordingly, bring the jury
2 in, yes.

3 Is there any objection, sir, Mr. Lustberg?

4 MR. LUSTBERG: No, your Honor.

5 THE COURT: What I think I also should do is after my
6 deputy administers the oath to him, ask him if he understands
7 that he is sworn to tell the truth, and that he is subject to
8 perjury for not telling the truth.

9 Any objection?

10 MR. LUSTBERG: No.

11 MR. RICHENTHAL: That's perfectly fine. We conferred
12 with Mr. Lustberg. We're comfortable with him asking the
13 questions. We've accepted his good faith representation they
14 are based on personal knowledge. We think we understand the
15 scope of the questions. So we're preserving our right to
16 object, they don't control the witness, but I think we're
17 comfortable going forward.

18 THE COURT: Without a voir dire?

19 MR. RICHENTHAL: We had a chance to talk during the
20 break. We think this should be fine. We reserve the right to
21 object depending on what happens.

22 THE COURT: Mr. Weitzman, do you have any objections
23 on the charge that you want to lodge?

24 MR. WEITZMAN: Yes, your Honor. We have a number of
25 objections. We are going to need some time.

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1 THE COURT: How much time? What does that mean?

2 MR. WEITZMAN: I think it's going to be at least an
3 hour or hour and a half.

4 THE COURT: Let's bring this jury in.

5 MR. RICHENTHAL: Just so the Court knows, I think your
6 Honor's deputy knows. We've been advised the nature of the
7 video system does not permit the witness to see a document
8 without the jury seeing it. To the text we need to refresh the
9 witness or for that matter even seek to impeach the witness,
10 our choices are either the jury sees the document or the
11 witness is e-mailed the document. We're trying to make this
12 efficient. What I have done is I've e-mailed Ms. Collart a
13 document I might use to refresh --

14 THE COURT: It should be by e-mail so the jury doesn't
15 have to see it.

16 MR. RICHENTHAL: Yes.

17 THE COURT: How does this witness see -- I don't know
18 how the technology works. How do I know, obviously the jury
19 will see him. How do I know he sees the jury?

20 MS. COLLART: We've tested that out on the break and
21 he has a split screen view where he can see the jury box and
22 the lecturn where the questioner is.

23 THE COURT: Where do I go so he can see me? Because I
24 want to make sure he understands the nature of the oath.

25 MS. COLLART: If you are at the lecturn, he will see

O783MEN1

1 you.

2 THE COURT: I'll go to the lecturn.

3 MR. LUSTBERG: You're welcome, Judge. We're happy to
4 have you here.

5 (Continued on next page)

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(Jury present)

THE COURT: Ladies and gentlemen, we are going to have a witness who is going to be testifying from Egypt. I believe you can see him on your screens.

Ms. Blakely will administer the oath to him, and then I need it go to that lecturn myself, so he can see me and ask a few questions.

All right. The last time we were here, which was Wednesday, there was a witness on behalf of Mr. Hana. That witness has left the stand. Mr. Lustberg, is there another witness on behalf of Mr. Hana?

MR. LUSTBERG: Yes, your Honor. Mr. Hana calls Dr. Moustafa Hossein Abel Majeed Sayed.

THE COURT: Dr. Sayed, if you would rise, sir, and raise your hand.

(Witness sworn)

THE COURT: You may be seated, Dr. Sayed. Can you see me, sir?

THE WITNESS: Yes, sir.

THE COURT: Can you see the jury?

THE WITNESS: Yes.

THE COURT: Ladies and gentlemen of the jury, can you see the witness?

A JUROR: Yes.

THE COURT: The jury has indicated yes.

O783MEN1

Sayed - Direct

1 Dr. Sayed, do you understand that you are now sworn,
2 that the testimony you are going to give this court is the
3 truth, the whole truth, and nothing but the truth?

4 THE WITNESS: Of course, of course, for sure.

5 THE COURT: Do you understand, sir, if you do not tell
6 the truth, you can be subject to penalty under United States
7 law?

8 THE WITNESS: Of course.

9 THE COURT: Your witness, Mr. Lustberg.

10 Thank you, Dr. Sayed.

11 MOUSTAFA HOSSEIN ABEL MAJEED SAYED,

12 called as a witness by the Defendant,

13 having been duly sworn, testified through the Arabic

14 interpreter as follows:

15 DIRECT EXAMINATION

16 BY MR. LUSTBERG:

17 Q. Dr. Sayed, I'm just going to wait for Judge Stein to go
18 back to the bench.

19 A. Okay.

20 Q. Thank you.

21 MR. LUSTBERG: May I proceed, Judge?

22 THE COURT: Yes.

23 Q. Dr. Sayed, how are you currently employed?

24 A. I am a senior veterinarian at the Central Administration of
25 Research Quarantine, at the General Authority of Veterinarian

O783MEN1

Sayed - Direct

1 Services within the Egyptian Ministry of Agriculture.

2 Q. Do you also have a role with IS EG Halal?

3 A. Yes, minister resolution by the minister of agriculture for
4 me in October of 2021 to supervise the offices of IS EG Halal
5 in South America, in Brazil, Uruguay, Paraguay, and Argentina.
6 And I was notified by the head of the agency, the late
7 Dr. Abdel Hakim Mahmoud, to be a supervisor for the technical
8 team, being the most senior member next in the team.

9 (Continued on next page)

O78Wmen2

Sayed - Direct

1 BY MR. LUSTBERG:

2 Q. And what are your job responsibilities in that capacity?

3 A. My job is totally confined to the technical part of the
4 halal slaughter in terms of -- we have different scopes of
5 work, one of which covers meat and others cover things like
6 gelatin products and dairy products. And my job is confined to
7 the authorization of documents to make sure that they conform
8 with sanitary and technical specification and to conduct field
9 visits and to issue certificates of validity side by side with
10 the sheikhs who are delegated by the Egyptian Ministry of
11 Endowments.

12 Q. Thank you.

13 Just briefly, what is your educational background?

14 A. I received a bachelor degree of veterinarian --
15 veterinarian sciences from Cairo University in 2002, and I have
16 a diploma in the supervision of health products from Benha
17 University in 2013.

18 Q. Thank you.

19 I'd like to direct your attention to March of 2019 and ask
20 you this. Was there a time when you came to the United States
21 as part of an Egyptian delegation to audit slaughterhouses here
22 in the United States?

23 A. That's correct.

24 Q. And when was that?

25 A. I believe that was between the 13th and the 28th of March

O78Wmen2

Sayed - Direct

1 of 2019. OK. I'm not sure if it started on the 13th or the
2 17th. That was five years ago.

3 Q. OK.

4 And what was your role during that audit?

5 A. We were divided into two teams. Every team, every team --
6 or each team had a veterinarian from the current team and one
7 from the laboratories and one from the slaughterhouses.

8 Q. Go ahead. I'm sorry.

9 And what role were you playing?

10 A. A ministerial decision was issued for us to go check on the
11 status of the slaughterhouses in America and how -- how they
12 conform to the specifications that are set by the Egyptian
13 Ministry of Agriculture.

14 Q. OK. Sorry.

15 A. And also to certify or to validate the slaughterhouses that
16 conform with the Islamic Sharia ways of slaughtering animal.

17 Q. I want to ask you about your own observations with regard
18 to that audit. Please just confine your answers to what you
19 yourself observed as opposed to what anybody told you.

20 A. OK.

21 Q. I want to direct your attention to the audit of a certifier
22 called Ifanca. Do you recall that?

23 A. Yes. (in English)

24 Yes, I do.

25 Q. And did you attend an audit of Ifanca?

O78Wmen2

Sayed - Direct

1 A. I did.

2 Q. Please tell the jury what happened when you observed the
3 audit at Ifanca.

4 A. I was assigned by Dr. Ahmed Abdel Karim, the head of the
5 delegation, to visit the Ifanca company for halal meat because
6 it was geographically close to the location of our visit as a
7 team. It was located in Illinois. We conducted a field visit,
8 and our team consisted of myself, Dr. Zaghloul Khedr and
9 Dr. Alsayed Alhassaneen. And from the American side appeared
10 Mr. Bret Tate from the U.S. embassy in Cairo, the Arab Republic
11 of Egypt. And there was -- that was also the presence of
12 Ms. Brittany from the U.S.D.A. And she was assigned to
13 accompany the delegation with Mr. Bret Tate.

14 We visited the center, and we met with Mr. Muhammed
15 Chaudry, who was the head of the Islamic center, and he had his
16 assisting team. They showed us how the documentation process
17 works in the company, and they offered a presentation showing
18 us the way they worked. But we want to -- we wanted to
19 ascertain whether or not what they said on paper was actually
20 applied in reality, so insisted on making a field visit one of
21 the slaughterhouses.

22 When we made that request to him, he told us that he was
23 not able to accommodate that request at that time. And instead
24 he proposed to show us by video a live process of slaughtering
25 animals the way they do it in the slaughterhouse. In order to

O78Wmen2

Sayed - Direct

1 show flexibility, we accepted that proposal so we can start the
2 process of inspection and also to give them a hand, offer help,
3 if needed. So they put us in the external hallway, my team and
4 Mr. Bret Tate and Ms. Brittany, and they started playing a
5 video telling us that this was a live broadcast of a slaughter
6 that was taking place in real time.

7 I was sitting right in front of the screen, and behind me
8 the team and Mr. Bret, and I noticed that the timing of the
9 screen was different from the time that we were at at the time.
10 It was about 10 o'clock in the morning, and the timing of the
11 screen said 1 p.m. in the afternoon.

12 At that point I asked the administrator at the center how
13 far the slaughterhouse was located from where we were, and he
14 said about 30 minutes away. And I asked a second question: Is
15 there any difference in the time zone between the area where we
16 were and the area where the slaughterhouse was? And they said
17 no, there was no time difference.

18 At that point I brought the matter to the attention of Mr.
19 Tate. I told him that doesn't make any sense; the time was not
20 the same. And he smiled back to me and said no comment.
21 That's what happened with the -- and we wrote a report to the
22 head of the delegation, Ahmed Abdel Karim, and explained what
23 happened.

24 Q. OK. Did you go to any other slaughterhouses during that
25 audit?

O78Wmen2

Sayed - Direct

1 A. We visited three slaughterhouses in order to audit and
2 ascertain the adherence to the specifications in the
3 slaughterhouses in the United States.

4 Q. I'm sorry. What was that?

5 A. But I was assigned to visit two Islamic centers with my
6 team.

7 Yes. (in English)

8 Q. And by your own observations, is there anything that you
9 observed at those other centers that caused you concern?

10 A. In terms of the technical issues, adherence to veterinarian
11 standards with the Egyptian international, we noticed they
12 adhered to the standards so we had no problem with them in
13 terms of approving them in that regard. And on that ground, we
14 accepted them as a facility that adhered to the standards of
15 the United States food and safety procedures.

16 Q. OK.

17 A. Yes. (in English)

18 Q. What about with regard to halal standards?

19 A. Regarding halal standards, in the last slaughterhouse I
20 visited, I noticed that the slaughtering was done by the
21 Islamic Society of California. I noticed that the method of
22 slaughtering was vertical slit to throat of the animal to cut
23 the carotid artery, vertical cut across -- yes (in English),
24 and that violates the rules of halal slaughtering, which has to
25 be transverse, transverse cut. That's what I noticed about

O78Wmen2

Sayed - Direct

1 this particular Islamic center.

2 And there was a visit also that was paid to another center
3 called the Islamic Society of America. We visited the center
4 with the same team, and we conducted a document verification
5 process, but what we learned at that point is that they do not
6 directly supervise the process of slaughtering animals --
7 whether cows, lamb and other animals; they don't do that
8 directly. But they obtain the halal products from another
9 Islamic center called Halal Transactions of Omaha.

10 And when we asked to see the actual slaughtering process,
11 they showed us a video that turned out to be an old one that
12 goes back to 1987.

13 Q. How did you know that it was an old video that went back to
14 1987?

15 A. We were sitting watching the video, and we noticed the
16 quality of the picture was very old, and that video was
17 actually -- was also on YouTube.

18 Q. One last question. Did you have -- did you make any
19 observations with regard to the question of the time between
20 stunning cattle and slaughter?

21 MR. RICHENTHAL: Objection. Leading.

22 THE COURT: Sustained. Leading.

23 BY MR. LUSTBERG:

24 Q. OK. What, if anything, did you observe with regard to
25 issues of stunning?

O78Wmen2

Sayed - Cross

1 A. The stunning process in the United States is different from
2 stunning some other countries. In the United States they use
3 what they call perforated needle. And according to Egyptian
4 specifications and standards, that method of stunning did not
5 comply with the halal Egyptian standard.

6 MR. LUSTBERG: Thank you. I have no further
7 questions. Thank you very much. Thank you, sir.

8 THE COURT: Is there any cross-examination of this
9 witness?

10 MR. RICHENTHAL: Yes, your Honor, but I don't know if
11 any of the other defendants want to --

12 THE COURT: Oh, I am sorry. I've done that before.

13 MR de CASTRO: Not for Mr. Daibes.

14 MR. FEE: No, your Honor.

15 THE COURT: OK.

16 CROSS-EXAMINATION

17 BY MR. RICHENTHAL:

18 Q. Good morning from New York, and good evening in Egypt,
19 Dr. Sayed.

20 A. Good morning.

21 Q. If you have any trouble understanding me, just let me know,
22 because we're using an interpreter. OK?

23 A. Will do.

24 Q. Now, you work for the Egyptian government, is that right,
25 sir?

O78Wmen2

Sayed - Cross

1 A. Correct.

2 Q. Now, the part of the government that you work for, in
3 English, is sometimes referred to as the General Organization
4 for Veterinary Services, is that right?

5 A. Correct.

6 Q. I'm going to refer to that as GOVS, G-O-V-S. Is that all
7 right with you?

8 A. Yes.

9 Q. Now, you've worked for GOVS for over a decade, correct?

10 A. Correct.

11 Q. And you're paid by GOVS -- that's right; your salary, in
12 other words, is paid by the part of the Egyptian government
13 known as GOVS?

14 A. Yes.

15 Q. Do you get a salary from anyone else for your work?

16 A. No.

17 Q. And that includes IS EG Halal, correct?

18 A. OK. So per the ministerial decree, IS EG pays us a daily
19 per diem.

20 Q. IS EG Halal pays money when you do work for IS EG Halal, is
21 that correct?

22 A. OK. So this money gets paid per a ministerial decree, it
23 is -- certain fees are paid in that decision --

24 Interpreter's correction: So the ministerial decree states
25 that IS EG Halal will pay for travel, lodging and per diem.

078Wmen2

Sayed - Cross

1 Q. And just to be clear, sir, when you say ministerial decree,
2 you mean a decree of the government of Egypt, correct?

3 A. Yes, it was a ministerial decision issued by the ministry,
4 because the company that requested was IS EG Halal Egypt.

5 Q. And IS EG Halal Egypt is the only company certified to
6 export meat to Egypt, right?

7 A. Correct.

8 Q. Now, you recently applied for a visa to travel to the
9 United States, is that right, in fact, in early June?

10 A. Yes. (in English)

11 Correct.

12 Q. And you said on the visa that you worked for IS EG Halal,
13 right?

14 A. Yes. (in English)

15 Correct.

16 Q. But in fact, you work for the Egyptian government, right?

17 A. Yes. (in English)

18 Correct.

19 Q. Now, you also applied for a visa last year to travel to the
20 United States, is that right, sir?

21 A. Yes. (in English)

22 Correct.

23 Q. And when you applied -- I'm sorry.

24 THE INTERPRETER: There's a second lag.

25 BY MR. RICHENTHAL:

O78Wmen2

Sayed - Cross

1 Q. And when you applied for the visa recently, you were asked
2 if you'd ever been denied a visa before, correct?

3 A. Yes. (in English)

4 Correct. Yes.

5 Q. And you answered no, right?

6 A. Yes. (in English)

7 Yes.

8 Q. But in fact, your visa last year was denied, wasn't it?

9 A. Can I answer?

10 Q. Sir, is it true that your visa last year was denied?

11 That's true, isn't it?

12 A. OK. So I was informed by the consular of Uruguay that my
13 visa was under administrative process. They said
14 administrative process refused but is not denied.

15 Q. OK. Now, you testified about participating in part of a
16 2019 audit of certain beef slaughterhouses in the United
17 States, right?

18 A. Correct.

19 Q. Now, that audit was not led by you, correct; it was led by
20 Dr. Ahmed Abdel Karim?

21 A. Correct.

22 Q. And he was your boss, right?

23 A. Yes, he was the head of the veterinarian delegation.

24 Q. And Dr. Karim knew Wael Hana before the audit, did he not?

25 A. Correct.

078Wmen2

Sayed - Cross

1 Q. But you did not know Mr. Hana, did you?

2 A. No, I did not know him.

3 Q. Now, at the end of the audit, Egypt approved all of the
4 beef slaughterhouses that you had visited; that is, the beef
5 slaughterhouses in the United States were approved to export
6 beef to Egypt, right?

7 A. Correct.

8 Q. And not just the slaughterhouses you visited, other
9 slaughterhouses too, right?

10 A. We approved the system for all the slaughterhouses, the
11 system itself, same as when the system in Australia was
12 approved and the one in New Zealand.

13 Q. Now, let me switch from slaughterhouses to halal
14 certifiers. All right?

15 A. OK. (in English)

16 Q. Now, Egypt approved the entire system -- that is, all
17 slaughterhouses -- but it did not approve all halal certifiers,
18 right?

19 A. Correct.

20 Q. In fact, it unapproved -- that is, decertified -- all of
21 the existing halal certifiers, right?

22 A. Correct.

23 Q. And it then approved a brand-new one, IS EG Halal, right?

24 A. Correct.

25 Q. Now, that company, IS EG Halal, had never certified halal

O78Wmen2

Sayed - Cross

1 food previously, had it?

2 A. Correct.

3 Q. Not for Egypt?

4 A. Correct.

5 Q. Not for any country?

6 A. Correct.

7 Q. Now, I want to talk about the companies that you visited.

8 Now, first, just to be clear, you only visited some of the
9 existing companies that were certifying meat as halal, correct,
10 sir?

11 A. Correct. Yes. The agreement was from the General
12 Administration for Veterinary Services and the American
13 agricultural *attaché*, and we were going to see a representation
14 sample of the companies that do the certification.

15 Q. And just to be clear, when you say representation sample,
16 what you mean is you only visited or interacted with some, but
17 not all, of the existing certifiers, right?

18 A. Yes. (in English)

19 So, the representative sample was for slaughterhouses and
20 not halal certifiers.

21 Q. And in fact, the other halal certifiers had meetings in
22 Washington, D.C., after you'd returned to Egypt, right?

23 A. That's a meeting that was held through Dr. Ahmed Abdel
24 Karim.

25 Q. Exactly, but you weren't in those meetings, were you,

O78Wmen2

Sayed - Cross

1 Dr. Sayed?

2 A. Yes. I did not attend these meetings.

3 Q. Dr. Karim attended those meetings?

4 A. Yes.

5 Q. And those are the meetings that IS EG Halal was in, right?

6 MR. LUSTBERG: Objection.

7 THE COURT: We'll find out.

8 You may answer. Was IS EG Halal in the meetings in
9 D.C. with Dr. Karim?

10 THE WITNESS: I do not know. I don't know. Honestly,
11 I don't know.

12 BY MR. RICHENTHAL:

13 Q. Well, in any event, you never met with IS EG Halal during
14 the audit, right?

15 A. No, I did not meet them.

16 Q. And you never met with Mr. Hana during the audit?

17 A. No.

18 Q. Now, I want to talk to you a minute about Ifanca. That's
19 the company where you said you saw a video of a slaughterhouse
20 that was supposed to be 30 minutes away, and it looked to you
21 like it was not live, is that right?

22 A. OK. Yes.

23 Q. Now, this was a presentation the company was making to you,
24 correct?

25 A. It was not a presentation.

078Wmen2

Sayed - Cross

1 Q. Let me be more precise. They were showing you their
2 operations, but not at their literal place of operation,
3 correct?

4 A. No. They said that the slaughtering takes place in the
5 slaughterhouse through them, and that's why they would
6 broadcast a live video of the slaughtering for us to see the
7 process.

8 Q. That was actually exactly my question. They showed you a
9 live video, but there was no slaughtering at the time, and then
10 they also showed you a recording video, right?

11 A. No. They only showed us one video, and they said that that
12 was a live feed. But it was not a live feed. But verifying
13 the time on the video it was not -- the discrepancy, it was not
14 a live feed.

15 Q. Sir, at this time what language were you speaking with Mr.
16 Tate?

17 A. English.

18 Q. English. And English is not your first language, is it?

19 A. Yes. (in English)

20 Yes.

21 Q. In fact, you're testifying right now through an
22 interpreter, correct?

23 A. Correct.

24 Q. And that's because English is not a language you're
25 perfectly fluent in, is it?

O78Wmen2

Sayed - Cross

1 A. Correct.

2 Q. Now, at the end of the audit, I think you said earlier IS
3 EG Halal was the only company certified, right?

4 A. Correct.

5 Q. Now, you didn't decide that that should be a company that
6 gets a monopoly, right?

7 A. Correct.

8 Q. That was made above your level, right, sir?

9 A. I'm only a team member, but the decision would be made by
10 the General Administration for Veterinary Services and the
11 minister of agriculture.

12 Q. That is, the head of that part of the government of Egypt,
13 right?

14 A. And -- yes. I would also like to add something, please.

15 OK. And also, I would like to add something. Our team was
16 mostly concerned with verifying the system generally used in
17 the United States to ensure food safety in slaughterhouses, and
18 that's what our team was concerned with and that's what we
19 ended up approving.

20 Q. Thank you for adding that, sir, because that was actually
21 my next question.

22 The focus of your visit, to be clear, was not on halal
23 certification, right; it was on food safety -- that's why you
24 referred a few minutes ago you referred to the system in the
25 United States? Correct?

O78Wmen2

Sayed - Cross

1 A. Yes. (in English)

2 Correct. Exactly.

3 Q. The focus on halal certification was others, not you?

4 A. Correct. Exactly.

5 Q. Now, I've been asking you a series of questions about the
6 2019 audit. I just want to step back for a moment.

7 That was not the first time you visited the United States
8 for the Egyptian government, correct?

9 A. Yes. (in English)

10 Correct.

11 Q. In fact, you visited in 2013 as part of a different audit,
12 right?

13 A. Yes. (in English)

14 Q. Now, that audit -- that's the 2013 audit, for that one, you
15 were actually the head of the delegation, not Dr. Karim, right?

16 A. No. It was Dr. Ahmed Fathy who was the head of the
17 delegation.

18 Q. OK. But not Dr. Karim, right?

19 A. No.

20 Q. Now, in 2013, multiple halal certifiers continued to be
21 certified after the audit, right?

22 A. Exactly.

23 Q. And one of those was Amana of New York, right?

24 A. Yes.

25 MR. RICHENTHAL: Thank you for your time, sir.

078Wmen2

Sayed - Redirect

1 THE WITNESS: Thank you. (in English)

2 MR. LUSTBERG: Your Honor, brief redirect?

3 THE COURT: Yes, sir.

4 MR. LUSTBERG: Thank you.

5 REDIRECT EXAMINATION

6 BY MR. LUSTBERG:

7 Q. Dr. Sayed, you speak some English, right?

8 A. Yes. (in English)

9 Yes.

10 Q. You can understand, during your trip to -- strike that.

11 During your trip to the United States for the audit, you
12 could communicate in English with Mr. Tate?

13 A. Yes. (in English)

14 Yes. We didn't have a translator in the mission. (in
15 English)

16 Q. Thank you. Just two other questions.

17 One, Mr. Richenthal asked you some questions about who pays
18 your salary as between IS EG Halal and the government of Egypt.
19 Can you explain to the jury what the relationship is between IS
20 EG Halal and the government of Egypt?

21 A. OK. So, I want to explain two aspects.

22 First, IS EG is a company that was established per the
23 decision of the prime minister of Egypt, decision No. 35 for
24 the year 2020. And it is -- OK, and it's a contributing
25 company that has three ministries under which -- three

O78Wmen2

Sayed - Redirect

1 ministries, the Ministry of Agriculture and the Ministry of
2 Endowment and general establishment to oversee trade, exports
3 and imports for the Ministry of Trade and Commerce.

4 Q. Let me stop you there. One moment.

5 So what you're describing is IS EG Halal in Egypt, correct?

6 A. Yes. (in English)

7 MR. RICHENTHAL: Leading.

8 THE COURT: I'll allow it.

9 A. Egypt, yes.

10 Q. And is that or isn't it different than IS EG Halal in the
11 United States?

12 A. OK. So, it is a company that is established in the Arabic
13 Republic of Egypt and it's not a government company. It is a
14 private company. It is considered an independent entity, but
15 it does declaration to the Egyptian government.

16 Q. Right. What I'm trying to understand --

17 A. Operation. Operation. OK.

18 THE INTERPRETER: Interpreter will correct the word:
19 Not declaration. Operation.

20 A. So it is -- all these companies that operate overseas, they
21 operate under Egyptian government.

22 Q. OK. And IS EG Halal in the United States is something
23 different, right?

24 MR. RICHENTHAL: Objection. Personal knowledge and
25 asked and answered.

O78Wmen2

Sayed - Redirect

1 THE COURT: Yes.

2 BY MR. LUSTBERG:

3 Q. What's the relationship between IS EG Halal in the United
4 States and the entity you've been describing in Egypt that's
5 composed three ministries?

6 MR. RICHENTHAL: Scope, hearsay, personal knowledge.

7 THE COURT: I'll allow it.

8 A. OK. So, the company in Egypt, the membership of the board
9 has the three ministries that I mentioned. However, in the
10 operation overseas, whether by America, it all operates under
11 the Egyptian government.

12 THE COURT: And is that true of the IS EG Halal that
13 operates in the United States as well?

14 THE WITNESS: Correct.

15 BY MR. LUSTBERG:

16 Q. One last question. You were asked some questions about a
17 company called Amana of New York. Do you remember that?

18 A. Yes, of course.

19 Q. Did Amana of New York certify any beef products to go from
20 the United States to Egypt as halal?

21 MR. RICHENTHAL: Objection.

22 THE COURT: I'll allow it.

23 A. OK. So, when we did, when we conducted the visit in 2013,
24 under the leadership of Dr. Ahmed Fathy, Amana did not certify
25 any beef. It was solely for poultry, and since 2016, they did

O78Wmen2

1 not export to Egypt anything other than poultry until maybe
2 2019.

3 MR. LUSTBERG: Thank you, your Honor. I have nothing
4 further.

5 THE WITNESS: And something about the salary.

6 MR. RICHENTHAL: I just have one question.

7 THE COURT: Yes.

8 RECROSS EXAMINATION

9 BY MR. RICHENTHAL:

10 Q. Hello again, sir.

11 How many conversations did you participate in between Wael
12 Hana and a man named General Ahmed?

13 A. What? (in English)

14 Q. How many conversations did you participate in between Wael
15 Hana and an individual known as General Ahmed?

16 MR. LUSTBERG: Objection. Beyond the scope of
17 redirect.

18 THE COURT: No. I'll allow it, given the questioning
19 on redirect.

20 A. Not even once.

21 MR. RICHENTHAL: Thank you.

22 THE COURT: All right. Thank you, sir. You are
23 excused. Thank you, Dr. Sayed.

24 (Witness excused).

25 THE COURT: Let's cut that connection, please.

O78Wmen2

1 Is there another witness on behalf of Mr. Hana?

2 MR. LUSTBERG: No, your Honor. But I have a couple
3 of -- one stipulation to read in and we also, just to be clear,
4 with the consent of the government, we would offer Hana Exhibit
5 211, which is a list of all the other exhibits that Mr. Hana
6 has admitted, and I won't read all those to save time unless
7 the Court wants me to.

8 THE COURT: All right. Admitted.

9 (Defendant's Exhibits Hana 211, Hana-013, Hana-013-T,
10 Hana-030 to Hana-036, Hana-095 to Hana-101, Hana-101-T,
11 Hana-102 to Hana-110, Hana-112 to Hana-115, Hana-117 to
12 Hana-122, Hana-124 to Hana-129, Hana-130-100, Hana-131-100,
13 Hana-132, Hana-141 to Hana-165, Hana-167 to Hana-169,
14 Hana-170-R, Hana-171-R, Hana-172, Hana-175 to Hana-178,
15 Hana-180 to Hana-181, Hana-190 to Hana-191, Hana-191-T,
16 Hana-192 to Hana-194, Hana-197 to Hana-200, Hana-202, Hana-204
17 to Hana-205, Hana-205-T, Hana-207 to Hana-209, Hana-210,
18 Hana-1000, Hana-1001, Hana-1002, Hana A101-100 to Hana
19 A101-104, Hana A103-100, Hana B205-100 to B205-106, Hana
20 B207-100 to Hana B207-102, Hana B209-100, Hana B213-100 to Hana
21 B213-101, Hana B224-100, Hana C102-100, Hana C102-101, Hana
22 C102-103 to Hana C102-108, GX A109-B-TR, GX 10C-6 received in
23 evidence)

24 MR. LUSTBERG: I do want to read one exhibit, one
25 stipulation. This is Hana Exhibit 1004, in which the following

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1 is stipulated:

2 "If called as a witness at trial, a special agent of
3 the Federal Bureau of Investigation ('FBI') would testify that
4 in a search executed on November 25, 2019, cash in the amount
5 of \$5,943 was located in Mr. Hana's residence."

6 I believe we have one -- do we have --

7 We also offer Defendant's Exhibit 2207, which I
8 believe has been shown to the government. I don't know --
9 thank you.

10 THE COURT: Is there an objection?

11 MR. RICHENTHAL: No, your Honor. Some of these are
12 pursuant to a limiting instruction. I think what might make
13 sense, for efficiency, is we can talk to defense counsel and
14 the Court can note that on the record.

15 THE COURT: OK.

16 MR. RICHENTHAL: That's for the exhibits that
17 Mr. Lustberg was just referring to.

18 Separate, we do have a potential issue with one of the
19 exhibits Mr. Lustberg referred to. But I want to respect the
20 time of the jury. We can deal with that separately,
21 specifically 2227.

22 MR. LUSTBERG: 2207, you mean?

23 MR. RICHENTHAL: 2207. Excuse me.

24 MR. LUSTBERG: We can address that after. Other than
25 that, Mr. Hana rests.

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1 THE COURT: I need to admit that. What exhibits are
2 you admitting now?

3 MR. LUSTBERG: So, we've admitted all the exhibits.
4 We've admitted Hana Exhibit 1004, which is the stipulation I
5 read, and we've admitted Hana Exhibit 211 and all the exhibits
6 that are listed on 211, none of which, I understand, have any
7 objections to them.

8 THE COURT: All right. Admitted.

9 (Defendant's Exhibit 1004 received in evidence)

10 MR. LUSTBERG: And I think all that's left is Exhibit
11 2207, which we can address later.

12 THE COURT: All right.

13 Ladies and gentlemen, why don't I excuse you. It will
14 be just about 10 or 15 minutes. We need to deal with some
15 legal matters.

16 (Continued on next page)

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(Jury not present)

THE COURT: All right. Please be seated.

Should we handle 2207? What's the issue?

MR. RICHENTHAL: So, 2207 we were given notice of this morning. I believe this was actually an exhibit that Mr. Menendez wanted to put in before he rested and has now provided to Mr. Hana's team, which is fine, but just to be clear, it's not, to our knowledge, relevant to Mr. Hana at all.

This is a partial bank record, as we understand it.

THE COURT: Let me see it. Do you have a copy, anyone?

MR. LUSTBERG: Oh, sorry.

THE COURT: Go ahead.

MR. RICHENTHAL: So, as I understand it, and we haven't had much time with this, so I may get it wrong. But as I understand it, this is a partial bank record of 2013 of Nadine Arslanian, the woman later known as Nadine Menendez, appearing to indicate one or more debits of an unclear nature. It's not entirely clear to us why Mr. Menendez's team wanted to offer this, why it's appropriate in Mr. Hana's case and, frankly, what it means. Again, it's 2013 -- that's five years before the charges. The debit's entirely unclear. It doesn't indicate it's cash, for example, if that's the theory. It just says debit.

Without a witness to put this in context, we think

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1 it's confusing. It's unclear it's even relevant at all, and it
2 should be precluded including because it's being offered in
3 Mr. Hana's case, when it has nothing to do with Mr. Hana.

4 THE COURT: All right.

5 Mr. Lustberg.

6 MR. LUSTBERG: Thank you, your Honor.

7 Obviously, if it's one big conspiracy -- everybody's
8 sort of in it together, as the government alleges, this is an
9 exhibit that shows -- it's true -- debits. They appear to be
10 cash withdrawals, although I understand --

11 THE COURT: It's 2013.

12 MR. LUSTBERG: I understand. So this is all about
13 where cash came from that was located in the home.

14 THE COURT: No. I'm going to preclude it.

15 MR. WEITZMAN: Your Honor, can I be heard for a
16 moment?

17 THE COURT: Yes. You want to be heard on behalf of
18 Mr. Hana?

19 MR. WEITZMAN: Well, I would like to be heard only
20 because we are in the same conspiracy charge, and the question
21 of the money and what it's doing in the house is relevant to
22 all defendants, your Honor.

23 THE COURT: In 2013.

24 MR. WEITZMAN: Yes, because for the same reason that
25 the government offered records of Senator Menendez and the

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1 defense offered records of Senator Menendez that go back to the
2 1990s and 2000s showing cash withdrawals that go back in years
3 to the dates of when the cash actually is dated in the house is
4 relevant.

5 THE COURT: Precluded as offered by Mr. Hana.

6 Now, Mr. Lustberg, if you have no other witness, I
7 think I should allocute Mr. Hana.

8 MR. LUSTBERG: Yes, your Honor. I agree.

9 THE COURT: All right.

10 Mr. Hana, if you would rise, sir.

11 Mr. Hana, I wish to inform you of a couple of things,
12 and I believe you already know them because you've heard my
13 questioning of Mr. Menendez and of Mr. Daibes as well, but I
14 wish to go through them with you.

15 Do you understand, sir, that in American law, the
16 defense in a criminal case has no obligation to prove anything?

17 DEFENDANT HANA: Yes, your Honor.

18 THE COURT: The obligation is always on the government
19 to prove its case beyond a reasonable doubt.

20 Do you understand that?

21 DEFENDANT HANA: Yes, your Honor.

22 THE COURT: And you and your team can put on no
23 witnesses or introduce any evidence; you have no obligation
24 whatsoever to put forward a case.

25 Do you understand that?

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1 DEFENDANT HANA: Yes, your Honor.

2 THE COURT: Do you also understand, sir, that you are
3 presumed to be innocent at all times until such time, if ever,
4 that the jury believes the government has proved its case
5 beyond a reasonable doubt?

6 Do you understand that?

7 DEFENDANT HANA: Yes.

8 THE COURT: And do you also understand, sir, that
9 there are a number of decisions that really, at the end of the
10 day, are for your lawyer to make, such decisions as who to call
11 as witnesses, what questions to ask, what motions to make,
12 those sorts of things. But there are certain very important
13 decisions that are not for the lawyer to make but for you, the
14 defendant, to make.

15 Do you understand that?

16 DEFENDANT HANA: Yes, your Honor.

17 THE COURT: And among those decisions that are for you
18 to make is the decision of whether or not to testify in your
19 own defense.

20 Do you understand that?

21 DEFENDANT HANA: Yes.

22 THE COURT: And do you also understand that if you do
23 decide to testify, that anything you say can be used against
24 you?

25 DEFENDANT HANA: Yes, your Honor.

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1 THE COURT: Have you discussed this issue of whether
2 or not you should testify with your attorneys?

3 DEFENDANT HANA: Yes, I have.

4 THE COURT: Did they answer any questions you may have
5 had?

6 DEFENDANT HANA: Yes.

7 THE COURT: Do you have any questions of me in that
8 regard?

9 DEFENDANT HANA: No, your Honor.

10 THE COURT: Do you understand, sir, that the decision
11 of whether or not you are going to testify in your defense is
12 solely your decision to make?

13 Do you understand that?

14 DEFENDANT HANA: Yes, I do.

15 THE COURT: And what is that decision, sir?

16 DEFENDANT HANA: I'm not.

17 THE COURT: You're not what, sir?

18 DEFENDANT HANA: I'm not going to testify.

19 THE COURT: All right. Thank you.

20 Any further questions you wish me to ask,
21 Mr. Lustberg?

22 MR. LUSTBERG: No, your Honor.

23 THE COURT: Government, any questions you wish me to
24 ask?

25 MR. RICHENTHAL: No, your Honor.

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1 THE COURT: All right.

2 Thank you, Mr. Hana.

3 All right. I think I should call the jury back. And
4 I take it, Mr. Lustberg, you'll rest at that time.

5 Then what's the government rebuttal?

6 MR. RICHENTHAL: Just on the exhibits Mr. Lustberg
7 just moved in, as I said, some or all of them are, I think,
8 with the standard limiting instruction. They weren't
9 published. I don't think the Court needs to give the
10 instruction. But we'll can confer with the defense and we can
11 advise the Court separately.

12 THE COURT: Do that right now.

13 MR. RICHENTHAL: I think this actually doesn't need to
14 be dealt with. So, several of the exhibits were only offered
15 for purposes other than for the truth, but they weren't
16 published to the jury. We understand Mr. Lustberg's team is
17 going to respect that limitation in their closing. We'll
18 reserve the right to object if it's not respected, but I don't
19 think we need to take more of the Court's time on this.

20 THE COURT: All right. Will there be a government
21 rebuttal case in which you say what exhibits you're
22 introducing?

23 MR. RICHENTHAL: Yes. Ms. Pomerantz has two exhibits
24 to offer, your Honor.

25 THE COURT: All right. Fine. And then I'll excuse

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1 the jury. It's now 12:15. We have more of the charge to go
2 through. What I suggest is we do that and the parties need to
3 have lunch as well. Why don't I, with the assumption that it
4 will take about an hour to go through the charge -- I mean the
5 remaining objections of the parties -- shall I give the jury
6 two hours so that the lawyers will have an hour for lunch?

7 Does that make sense?

8 Counsel.

9 MR. WEITZMAN: I'd be comfortable with a shorter lunch
10 for the lawyers so that we have enough time.

11 THE COURT: Let's make it an hour and a half then.

12 MR. WEITZMAN: I was suggesting two hours for the
13 jury, but the lawyers can have a shorter lunch so that we have
14 enough time for the jury charge.

15 THE COURT: We'll take the time necessary for the
16 charge. I'll give the jury two hours.

17 MR. WEITZMAN: Thank you.

18 MR. RICHENTHAL: I would just say, and I think the
19 Court is sensitive to this, we do need a little time between
20 the end of the charge conference and the commencement of the
21 summation, because to the extent that things change --

22 THE COURT: Why?

23 MR. RICHENTHAL: -- we need to be able to reflect that
24 in our slides or our remarks.

25 THE COURT: I understand. You can call that lunch.

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1 OK. Let's bring the jury in.

2 I'll give the government time. I appreciate all the
3 parties are helping move toward a resolution here, move toward
4 the jury having this case.

5 How long is the proposed initial government summation?

6 MR. MONTELEONI: Your Honor, I think that I'm going to
7 try to keep it to under five hours.

8 THE COURT: Mr. Lustberg, I don't think you've rested
9 in front of the jury, correct? So we'll do that.

10 MR. LUSTBERG: I might have, but it was pretty
11 quietly, so I'm happy to do it again.

12 THE COURT: All right. I think actually you may have
13 before the allocution.

14 MR. LUSTBERG: Yes.

15 THE COURT: So we'll do it now.

16 (Continued on next page)

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1 (Jury present)

2 THE COURT: Please be seated in the courtroom.

3 Mr. Lustberg, is there another witness for Mr. Hana?

4 MR. LUSTBERG: No, your Honor. And with that,

5 Mr. Hana rests.

6 THE COURT: All right. Thank you.

7 Ladies and gentlemen, you have seen that all three
8 defendants have rested. Now the issue is whether the
9 government wishes to put on a rebuttal case.

10 Government, is there going to be a rebuttal case?

11 MS. POMERANTZ: Just briefly, your Honor.

12 THE COURT: Yes, ma'am.

13 MS. POMERANTZ: The government offers Government
14 Exhibits E102-17 and E105-41 pursuant to stipulation,
15 Government Exhibit 1435.

16 THE COURT: All right. Those are admitted pursuant to
17 stipulation and without objection.

18 (Government Exhibits E102-17 and E105-41 received in
19 evidence)

20 THE COURT: Anything else?

21 MS. POMERANTZ: No. The government rests.

22 THE COURT: All right. You've seen the government
23 rest in its rebuttal case.

24 You have heard all of the evidence in the case.

25 There's no more evidence that can come in. I need some time

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1 with the lawyers to go over some legal matters. I'm going to
2 give you a two-hour lunch because we need to handle these legal
3 matters. So be back at 2:20, and we then will start the
4 government summation.

5 The order of summations are set by law. The
6 government goes first, then each defendant goes, and then the
7 government has the right to a rebuttal summation. Because the
8 government has the burden of proof, it's the last one to
9 address you.

10 At the end of that, I will then read to you my charge,
11 and then you will begin your deliberations. It will take a
12 couple of days for that entire process, but we are still on
13 track. So continue to keep an open mind. You've not heard --
14 you have heard all of the evidence. I repeat, you have heard
15 all the evidence.

16 Don't discuss this case amongst yourselves or with
17 anyone else. I'll see you back at 20 after two.

18 Thank you.

19 (Continued on next page)
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1 (Jury not present)

2 THE COURT: All right. You may be seated.

3 Mr. Weitzman, what can I do for you, sir?

4 MR. WEITZMAN: I think, depending on how you'd like to
5 proceed, we can go through it page by page. I can give you my
6 first proposed edit, or comment, which is page 43 of the
7 charge, or at least it's my version of the charge. So this is
8 charge 28, dual intent, no defense.

9 MR. RICHENTHAL: We have a scrivener's error just
10 prior to that.

11 THE COURT: Yes, sir.

12 MR. RICHENTHAL: Page 37, proposed instruction 25,
13 opinion of defendant's character or reputation.

14 THE COURT: Just a moment.

15 Yes.

16 MR. RICHENTHAL: It says "the defendant." There are
17 three. It also says "has called a witness who's given an
18 opinion of his character or reputation." I suppose that's true
19 in the sense that certain witnesses called for another purpose
20 also gave an opinion.

21 THE COURT: Yes.

22 MR. RICHENTHAL: But at a minimum, I think it should
23 be plural, because I think more than one defendant elicited
24 such testimony.

25 THE COURT: I have no objection to that.

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1 Any objection?

2 All right. Then on page -- let me let my clerk get
3 the system up.

4 Now we tried to be consistent in saying defendants.
5 Sometimes it will be defendant because it just slipped through,
6 but I'll read it appropriately as defendants.

7 On page 37, "the defendants have called one or more
8 witnesses who have given an opinion of his character or
9 reputation." OK. 37.

10 Mr. Weitzman.

11 MR. WEITZMAN: Yes. On charge 28, dual intent, we
12 believe the charge is inappropriate here, and I can give you an
13 example, your Honor, specific to the FARA charge.

14 THE COURT: Wait. Let me read it.

15 Go ahead, sir.

16 MR. WEITZMAN: Your Honor, in the first instance, we
17 think no such instruction is necessary. The example would be,
18 for example, a senator in connection with a FARA charge may be
19 asked to approve by, let's say, the Ukrainian president, who
20 says we need more aid and the senator might say, well, that is
21 good for Ukraine and it's good for the United States. That's
22 both a good and a bad motive under the government's theory, and
23 the fact that there is the good motive, that he's doing it in
24 aid of the United States's foreign interests is sufficient in
25 that regard.

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1 So I think this is an overstatement. But at a
2 minimum, your Honor, at a minimum, it needs to be more
3 balanced.

4 What we proposed, if your Honor were to give this
5 instruction, on page 44 of the defendant's proposed jury
6 charge, is a more balanced one, where it says at the end:
7 "That said, evidence of a good motive is, of course, relevant
8 in determining whether a defendant also possessed a
9 sufficiently bad motive. What matters is whether it is clear
10 beyond a reasonable doubt that a defendant, in fact, acted
11 because of an improper motive even if he also harbored other
12 intents."

13 And so at a minimum, if it's going to be given, it
14 should be balanced, but we don't think it needs to be given at
15 all.

16 MR. RICHENTHAL: So, taking those in order, with
17 respect to what Mr. Weitzman referred to the FARA charge, but I
18 assume he means the 219 charge, the 219 charge already
19 incorporates the principle he's talking about; namely, if an
20 action benefits the foreign principal but is not taken as
21 agency, it's actually the fourth sentence within instruction
22 70, on 97, which reads, and I'm now quoting --

23 THE COURT: Just a moment.

24 Yes, sir. Go ahead.

25 MR. RICHENTHAL: So, if your Honor looks at the

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1 foreign agent request explained, the sentence to which I was
2 referring, which is the third from the bottom, I believe it's
3 the fourth from the top.

4 THE COURT: What page?

5 MR. RICHENTHAL: Page 97.

6 THE COURT: Yes.

7 MR. RICHENTHAL: Instruction 70.

8 THE COURT: Yes.

9 MR. RICHENTHAL: The instruction, and I'm now quoting,
10 reads: "So a foreign principal does not make a qualifying
11 request merely by asking or persuading another person for his
12 own reasons to do something even if the request, if fulfilled,
13 would benefit the foreign principal."

14 So in that example, it's not agency, for the reason
15 Mr. Weitzman's explaining. That's encapsulated here and also
16 encapsulated more generally within the definition of agency.

17 With respect to dual intent itself, the instruction
18 that the Court is proposing to use has literally been standard,
19 to my knowledge, for more than 50 years. It was most recently
20 approved by the Second Circuit in the *Calk* case. I believe the
21 defense is getting this from a Seventh Circuit case in 1971.
22 That's not the law here and hasn't been for a very, very long
23 time.

24 MR. WEITZMAN: Your Honor, we're only proposing that
25 the judge instruct the jury, which I think is correct -- I

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1 don't think there's any law contrary to this -- that they can
2 look at good motives to evaluate whether there are bad motives.
3 We're not changing the law in any way.

4 THE COURT: Isn't that, first of all, as it is now,
5 pretty standard in a number of cases? What do you gain with
6 that last sentence?

7 MR. WEITZMAN: The charge, as it currently reads,
8 suggests that any modicum, any minimal amount of bad motive
9 suffices, and I don't think that's an accurate statement of the
10 law. And so I think the jury can look at the totality of the
11 circumstances to determine whether the good motives undermine
12 an inference of bad motive.

13 MR. RICHENTHAL: So that hasn't been the law in more
14 than 50 years. I'm now going to quote *Calk*, 87 F.4th 164, 181
15 (2d Cir. 2023). This is it; everything I'm about to say is a
16 direct quote:

17 "In the context of public official bribery, we have
18 stressed that a valid purpose that partially motivates a
19 transaction does not insulate participants in an unlawful
20 transaction from criminal liability."

21 That is not Mr. Weitzman's position. I respect that,
22 but that is the binding precedent in this circuit.

23 THE COURT: I'm going to keep it the way I have it.

24 MR. WEITZMAN: Just to be clear, I did not suggest
25 that there's insulation in any way, but I understand your

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1 Honor's ruling. I just think it suggests that a good motive
2 has no relevance to a finding of whether there's a bad motive.

3 THE COURT: It's been used many times before.

4 Next.

5 MR. WEITZMAN: From me, the next change is, or next
6 objection is charge 38. In particular, on the page that's --
7 the paragraph that starts "to qualify as an official act."

8 (Continued on next page)

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1 THE COURT: Just a moment.

2 MR. WEITZMAN: In the third sentence, it says the
3 decision or action may include using one's official position to
4 exert pressure on another official to perform or not perform an
5 official act. That sentence and the next sentence, next two
6 sentences, I think are an incorrect statement of the law.

7 The suggestion here is that an official act can be
8 satisfied by a third-party official conducting the official
9 act. That is not the law under *McDonnell*. It requires Senator
10 Menendez undertake an official act or agree to take an official
11 act. A third party taking an official act is not what is
12 required under *McDonnell*.

13 MR. RICHENTHAL: That's irreconcilable. This was
14 briefed extensively before trial. In fact, to my knowledge,
15 literally every court has rejected it uniformly, soundly, and
16 thoroughly for really good reason, including *McDonnell* itself
17 that quite literally talks about how the act can be taken by
18 someone else. This is to my knowledge every instruction since
19 *McDonnell* says this. I know why the defense doesn't like it,
20 but it's not the law.

21 MR. WEITZMAN: I don't think it is correct.

22 THE COURT: Just a minute, gentlemen. Go ahead,
23 Mr. Weitzman.

24 MR. WEITZMAN: Your Honor.

25 THE COURT: Clearly a third person can be involved

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1 here.

2 MR. WEITZMAN: A third person.

3 THE COURT: Can take the act.

4 MR. WEITZMAN: That's not how I read *McDonnell*, your
5 Honor. If you look at *McDonnell*, the language is quite clear
6 that it was McDonnell himself that needed to engage in the
7 official action. I'll quote.

8 THE COURT: Wait just a moment. Let me get it. No,
9 it looks like I don't have it in front of me.

10 MR. WEITZMAN: So the jump cite is page -- the pin
11 cite is page 47 of the ruling, and the paragraph at the top of
12 page 47, the Court analyzes the problem with the District
13 Court's instructions regarding official act. And I quote, "The
14 testimony at trial described how Governor McDonnell set up
15 meetings, contacted other officials, and hosted events. It is
16 possible the jury thought that a typical meeting, call, or
17 event was itself a 'question, matter, cause, suit, proceeding
18 or controversy.'"

19 THE COURT: That's taken care of. Call, meeting, so
20 forth. They're not official acts.

21 MR. WEITZMAN: Correct. Then the Court continues, "If
22 so, the jury could have convicted Governor McDonnell without
23 finding that he committed or agreed to commit an official act
24 as properly defined." It continues two paragraphs below, "The
25 District Court did not instruct the jury that to convict

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1 Governor McDonnell it had to find he made his decision or took
2 an action or agreed to do so on the identified question,
3 matter, cause, suit, proceeding, or controversy, as we have
4 construed that requirement. If the testimony reflects what
5 Governor McDonnell agreed to do at the time he accepted the
6 loans and gifts from Williams, then he did not agree to make a
7 decision or take an action on any of the three questions or
8 matters described by the Fourth Circuit."

9 In *McDonnell* itself, the question was whether he set
10 up meetings with state university officials. And the Court is
11 saying it's not what the state university officials will do and
12 whether they're in their public official capacity taking
13 official acts. It is whether Governor McDonnell is taking an
14 official act.

15 Under the theory that this instruction permits, a
16 non-public official who causes another public official to take
17 some action would be guilty of bribery or honest services
18 fraud. It doesn't make any sense. Senator Menendez has to be
19 the one who is engaged in official action. Otherwise *McDonnell*
20 has no teeth. It means he can arrange meetings and someone
21 else can engage in official action.

22 THE COURT: I understand.

23 MR. RICHENTHAL: I think Mr. Weitzman made his record.
24 He should keep reading the case. Because --

25 THE COURT: Please. Just --

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1 MR. RICHENTHAL: This has been rejected for a very
2 long time because it would immunize our public officials
3 against bribery prosecutions. I am going to quote from 573.

4 THE COURT: Just a moment. I now have it.

5 572. "For example, a decision or action to initiate a
6 research study -- or a decision or action on a qualifying step,
7 such as narrowing down the list of potential research topics --
8 would qualify as an 'official act.' *United States v. Birdsall*,
9 (finding "official action" on the part of subordinates where
10 their superiors "would necessarily rely largely upon the
11 reports and advice of subordinates ... who were more directly
12 acquainted with" the "facts and circumstances of particular
13 cases.")

14 What do you want me to look at in 573?

15 MR. RICHENTHAL: I'm sorry, your Honor. That is 573.
16 That is what I was going to direct the Court to.

17 THE COURT: I have it as 572. But I guess it doesn't
18 matter. Is that what you were going to refer me to?

19 MR. RICHENTHAL: Yeah. It appears in multiple places.

20 THE COURT: I think that answers it. All right. I'm
21 keeping the government's charge.

22 Next?

23 MR. WEITZMAN: Your Honor, just one addition, though I
24 think this only refers to, if I read it correctly, advice, and
25 there is no discussion of pressure here, which is I think what

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1 the government has charged. It may be elsewhere here but I'm
2 not seeing it.

3 MR. RICHENTHAL: The sentence before says the advice
4 or action may include using one's official --

5 THE COURT: Where are you?

6 MR. RICHENTHAL: I was --

7 THE COURT: In the charge, yes.

8 MR. RICHENTHAL: There are two sentences. The first
9 refers to pressure. The second refers to advice. Just like
10 *McDonnell*, it can be executed through pressure or executed
11 through advice.

12 THE COURT: What page?

13 MR. WEITZMAN: Your Honor, I see it. The issue I have
14 though is there is no definition of what pressure means.

15 THE COURT: Government, I see it. The decision or
16 action may include using one's official position to exert
17 pressure on another official to perform or not perform an
18 official act. I'm going to leave it as it is.

19 MR. WEITZMAN: There's no context or definition of
20 what pressure and advice mean. I'd like to preserve. And I
21 would refer your Honor to page 76 through 79 of the defendant's
22 proposed charge which has a definition of pressure and advice.
23 And what it makes clear is that the pressure and advice have to
24 be an exercise of official action itself, which I think is
25 correct. You have to use the public office of the senator to

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1 exert that the pressure or advice. It can't just be a phone
2 call which is exactly what -- a phone call that doesn't
3 actually exert pressure or advice.

4 THE COURT: No, but a phone call -- that's correct.
5 But a phone call that does exert pressure is actionable.

6 MR. WEITZMAN: Correct, but --

7 THE COURT: But that's what the parties are going to
8 debate here.

9 MR. WEITZMAN: I agree with your Honor. But there is
10 no guardrails or definition of what pressure or advice means,
11 so we refer to our proposed instruction there.

12 THE COURT: Government?

13 MR. RICHENTHAL: Your Honor's sentence literally says
14 using one's official position to exert pressure. I believe
15 that is also lifted directly from *McDonnell*. If Mr. Weitzman
16 wants to argue the senator didn't use his official position, he
17 can so argue.

18 THE COURT: The question is pressure. What is
19 pressure.

20 MR. RICHENTHAL: Oh. Well, that is your Honor's
21 pressure sentence. The sentence reads "The decision or action
22 may include using one's official position to exert pressure on
23 another official to perform or not perform an official act."
24 That's a legally correct sentence taken directly from
25 *McDonnell*.

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1 THE COURT: There is no definition of pressure.

2 MR. RICHENTHAL: That's true.

3 THE COURT: On page 76.

4 MR. RICHENTHAL: There is no definition in *McDonnell*
5 either. It is a layperson's term. It is for the parties to
6 ask the jury to decide.

7 THE COURT: I am going to keep it the way it is.

8 What else?

9 MR. RICHENTHAL: We have our own comment with respect
10 to the Court's official act instruction. It is slightly
11 earlier.

12 Page 56 of the instruction says "The question or
13 matter must be something specific and focused that is pending
14 or may be by law be brought before any public official."
15 That's the final full sentence on page 56.

16 That sentence I think is largely or entirely taken
17 from *McDonnell*. But what the Court writes next is as follows.
18 "That means something within the specific duties of an
19 official's position, the function conferred with the authority
20 of his or her office." That's also from *McDonnell*. The
21 problem is using the word "that" seems to modify both pending
22 and may be, may by law be brought.

23 As we read the decision, there are two types of
24 conduct at issue. One that can be pending, and one that may be
25 by law brought. The sentence about official duties as we

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1 understand it refers to the may be by law. The reason that has
2 to be so is two fold. So first, pending or --

3 THE COURT: No, I understand. But what's your
4 proposal to change that?

5 MR. RICHENTHAL: We would have the beginning of the
6 sentence that reads "that means" changed to "may by law be
7 brought means." Because we understand *McDonnell* to be talking
8 about that. Otherwise the "or" would be an "and." The pending
9 would be rendered superfluous or meaningless.

10 MR. WEITZMAN: I don't really understand it would be
11 superfluous.

12 THE COURT: Just a moment. Go ahead.

13 MR. WEITZMAN: I don't understand the proposed edit,
14 because a matter that is pending has to be within the specific
15 duties of an official's position if it is official action. The
16 notion that something can be pending and outside an official's
17 official duties.

18 THE COURT: Yes, I think that's right.

19 MR. RICHENTHAL: If I can direct the Court to
20 page 570. I think this is an error. We should try to track
21 the Supreme Court's decision as close as we can. I'm now going
22 to quote page 570 of *McDonnell*.

23 THE COURT: Just a moment.

24 MR. RICHENTHAL: I'm looking at the paragraph that
25 begins "In addition to the requirements we have described."

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1 THE COURT: Yes, I see it.

2 MR. RICHENTHAL: So, this is now a quote three
3 sentences below. "In particular, 'may by law be brought'
4 conveys something within the specific duties of an official's
5 position -- the function conferred by the authority of his
6 office." We have no problem with your Honor literally quoting
7 the case. That is different, with respect, from what's written
8 here, which refers we think, grammatically speaking, to both
9 pending and may be by law be brought.

10 MR. WEITZMAN: I don't think that's the proper reading
11 of *McDonnell*.

12 THE COURT: That's what the words say. May by law be
13 brought conveys something within the specific duties of an
14 official's position. That's literally from *McDonnell*.

15 MR. WEITZMAN: Correct. But you've got to look at the
16 reason why they're saying -- what *McDonnell* was saying in this
17 paragraph, it is defining what pending and may be law be
18 brought. And in defining the two of them, it's using one of
19 the terms, may by law be brought, conveyed something within the
20 specific duties of an official position. And it is using that
21 to say that pending and in the sentence before pending and may
22 by law be brought suggests something that is relatively
23 circumscribed. So the circumscribed thing that applies to both
24 of them is it has to be within the official duties of the
25 official's position. That's why it's only using one example to

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1 define the broader set.

2 THE COURT: I understand.

3 MR. RICHENTHAL: Our view is if that were right, the
4 word "pending" has no meaning at all. Because everything would
5 fall in the other category. Pending would have no meaning. It
6 has to have a meaning. And indeed, *McDonnell* itself, just to
7 step back, cites *Birdsall*, which is a case from 1914 which
8 talks about how things that are in the public official's power
9 that comes from duty or custom.

10 THE COURT: This is what I'm going to do. I'm going
11 to use the direct quote from *McDonnell*. So, all I'm going to
12 do is change that where it says that means something within to
13 say "may by law be brought" means something within the specific
14 duties and so on and so forth. That's an exact quote and I'm
15 going to use it.

16 Next.

17 MR. WEITZMAN: So, my next one is the same
18 instruction, in the quid pro quo section, the paragraph -- and
19 I'm sorry, my pagination is different from your Honor so I
20 can't refer to page number. The paragraph that starts with
21 keep in mind that. The second sentence is it is not --

22 THE COURT: Wait. I need to find that paragraph.

23 MR. WEITZMAN: Page 59, your Honor.

24 THE COURT: Yes. Keep in mind that.

25 MR. WEITZMAN: In the sentence that says "It is not a

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1 defense that the public official would have performed a
2 particular official act without the influence of a thing of
3 value." We would request the instruction that we proposed on
4 page 73 of the defendant's requested charge. It reads --

5 THE COURT: Just a moment. Go ahead.

6 MR. WEITZMAN: What we had proposed was "If, however,
7 you conclude that the public official would have taken the same
8 action, regardless of anything of value, you may consider that
9 as evidence that the public official did not demand, accept, or
10 agree to accept a thing of value in exchange for being
11 influenced in the performance of any official act."

12 We agree it is not a defense, but it is a relevant
13 piece of evidence.

14 MR. RICHENTHAL: So the defense can argue it is a
15 relevant piece of evidence.

16 THE COURT: Just a moment.

17 MR. RICHENTHAL: I'm sorry.

18 THE COURT: Go ahead.

19 MR. RICHENTHAL: If the defense wants to argue that
20 alleged evidence that Mr. Menendez would have done something
21 anyway shows he didn't have corrupt intent, they can make that
22 argument.

23 The problem is this instruction is legally wrong.
24 What it's asking is for the jury to engage in a counterfactual
25 hypothetical of what would have occurred. Implicit in that is

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1 that the bribe has to have actually influenced his conduct,
2 which is not true. As the Second Circuit has made clear ever
3 since at least *Meyers*, which is cited in the list of
4 authorities we put in our RTC, it doesn't actually matter if
5 the official's influenced at all. Literally it doesn't matter.
6 The official could be play acting. That's a direct quote from
7 *Meyers*.

8 So to ask the jury to perform a counterfactual as an
9 argument matter, meaning in summation, Mr. Weitzman can do
10 that. But to tell the jury if it performs the counterfactual
11 and concludes that the defendant would have taken the action
12 anyway, it may consider him not guilty, is wrong. It doesn't
13 matter whether the bribe influenced him.

14 THE COURT: Mr. Weitzman, isn't that true? It doesn't
15 matter as a matter of law, it does not matter whether the bribe
16 influenced him or not.

17 MR. WEITZMAN: That is correct, your Honor. I'm
18 just -- I think that the jury is entitled to consider whether a
19 public official was going to do that in any event as evidence
20 of whether he accepted the bribe. Your question assumes there
21 is a bribe. And we're using the argument, what Mr. Richenthal
22 describe as counterfactual, I just think that's not true. He
23 is coming from a position of an assumption there is a bribe.
24 If you don't assume there is a bribe, and you look at the
25 senator's conduct, that's what we're asking the jury to look

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1 at.

2 MR. RICHENTHAL: So the problem here is the charge
3 shouldn't have any assumptions at all. This is a defense
4 argument.

5 THE COURT: I'm going to keep it the way it is. If
6 anyone else has anything, they should, as we go along, state
7 it. We're up to I guess page 60 of my charge.

8 MR. AGATA: There is one matter we'd like to bring up
9 on the quid pro quo portion. That's on 58 on my copy.
10 Paragraph begins, "Government must prove that the defendant you
11 are considering" it is the last sentence. "At a minimum, the
12 government must prove the public official promised to take
13 official action on a particular question or matter as the
14 opportunity to influence the same question or matter arose."

15 In light of *McDonnell*, we ask that that sentence be
16 removed. *McDonnell* places into doubt whether something that is
17 unconcrete as a matter arose really satisfies that standard.
18 The government has to assert that, using *McDonnell*'s language,
19 something that's focused and concrete, the question and matter
20 etc. is identified at the time of the alleged quid pro quo.
21 This theory allows this to be identified at some later time, at
22 least the way this language is phrased, so we would ask that
23 last sentence be removed or certainly revised so that theory is
24 removed from the charge.

25 THE COURT: Let me read the introduction to that.

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1 MR. RICHENTHAL: I just have a very brief response. I
2 think it will make it more efficient. I think Mr. Agata is
3 trying to preserve their argument that the Court's already
4 rejected. Namely that the as opportunities arise theory does
5 not exist after *McDonnell*. The Second Circuit has concluded
6 repeatedly to the contrary. Every circuit has repeatedly
7 concluded to the contrary. I think the Court has already
8 rejected as opportunities arise no longer exists.

9 THE COURT: I'm keeping it as I have it.

10 Next, Mr. Weitzman.

11 MR. SOLANO: We have one. To the extent that the
12 attorneys for Mr. Menendez or Senator Menendez or Mr. Daibes
13 raise objections, we're all raising them. We are not going to
14 reargue them.

15 THE COURT: Yes, sir.

16 MR. SOLANO: On page 59, the second full paragraph
17 ends, "This element can be satisfied regardless of whether the
18 parties to the exchange had a prior relationship, nor does it
19 matter who initiated the exchange."

20 We don't quibble with that sentence. But we would ask
21 that the prior relationship can be probative of whether or not
22 there is a corrupt intent, essentially. That is, the
23 parties -- the jury shouldn't be led to believe that they
24 should disregard the existence of a prior relationship.

25 MR. RICHENTHAL: I think is similar to what I said

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1 with respect to Mr. Weitzman's most recent comment. That's a
2 perfectly fine defense argument, but this is a charge. It's
3 legally accurate as written. It is standard. It comes from
4 *McDonnell* and its progeny. It doesn't say the jury can't
5 consider --

6 THE COURT: Mr. Solano, do you have a disagreement
7 that this paragraph -- are you saying this paragraph does not
8 state the law?

9 MR. SOLANO: No, your Honor. I think the paragraph
10 accurately states the law. But what it can do is suggest to
11 the jury that the prior relationship between the parties is not
12 relevant. And all we would ask is that the jury be instructed
13 that a prior relationship between the parties can be considered
14 in determining whether the requisite intent exists.

15 MR. RICHENTHAL: Again, that's not a balanced charge.
16 But also literally the next charge, charge 39, is an entire
17 charge on good will gifts and prior relationships.

18 THE COURT: I think since this states the law, we're
19 all agreed with that, I'm going to keep it as it is. I don't
20 think that prior relationship, really lack of a prior
21 relationship or existence of a prior relationship, I don't need
22 to put that in. We can be satisfied regardless of whether they
23 had a prior relationship. I think that's fine as it is. You
24 have your objection.

25 MR. WEITZMAN: Yes. Charge instruction 40, the

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1 definition of corrupt intent we believe is too narrow. In your
2 proposed charge it says "Corrupt intent means to act with an
3 improper motive or purpose."

4 THE COURT: Isn't that absolutely standard?

5 MR. WEITZMAN: It may be standard, but it's not the
6 way the government has been defining it or the court has been
7 defining it for years in many cases, your Honor. So in the
8 *Arthur Andersen* case --

9 THE COURT: I gave you your corrupt intent as the
10 fourth element. That's throughout this. That's a major, seems
11 to me --

12 MR. WEITZMAN: It is, your Honor, and we appreciate
13 that but the definition of corrupt intent --

14 THE COURT: I thought that was the right way to go.

15 MR. WEITZMAN: Definition of corrupt intent in the
16 case law is corrupt intent means to act with a wrongful,
17 immoral, depraved or evil motive or purpose. That's directly
18 from the *Arthur Andersen* case and directly what the solicitor
19 general argued in connection with another bribery case which
20 was the *Snyder* case that just recently came out. And if you
21 look at the solicitor general's brief, it states that --

22 THE COURT: I have not done that, sir.

23 MR. WEITZMAN: I understand. I'll just quote it.
24 "Congress did not define corruptly for purposes of Section 666,
25 which is the gratuity statute, but this court has explained

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1 that the natural meaning of that term is 'normally associated
2 with wrongful, improperly depraved or evil conduct.'". Quoting
3 *Arthur Andersen*. So we would ask for that instruction.

4 MR. RICHENTHAL: Two responses. With tremendous
5 respect for the office of the solicitor general of the United
6 States, that's a brief. What your Honor's doing is tracking
7 case law, and I think this is the safer course to track case
8 law. And second, even the brief, I am not saying it is
9 necessarily wrong, even the brief uses the word "or." If it is
10 "or," it is utterly unnecessary to put more words in if the
11 defense is conceding the words here is correct.

12 MR. WEITZMAN: The solicitor general is citing from
13 the case. That's corrupt intent.

14 MR. RICHENTHAL: It is quoting in part, but it is also
15 referring, as Mr. Weitzman said, to a statute that's not
16 charged in this case.

17 THE COURT: I think I've taken this basically from
18 Sand. I think this is fine as it is.

19 All right. What else? Next.

20 MR. WEITZMAN: Just to preserve our objection, at the
21 end of instruction 40, again there is essentially a dual motive
22 instruction which we object to. I understand your Honor's
23 ruled on that.

24 THE COURT: Okay.

25 MR. WEITZMAN: The end of instruction 58.

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1 MR. RICHENTHAL: We have a small matter right before
2 that. Not right before that. Prior to that.

3 THE COURT: What is it?

4 MR. RICHENTHAL: Page 65, instruction 42. The final
5 paragraph refers to the government's evidence. I think this is
6 the only time in the charge the Court used that phrase. We
7 think it should be "the evidence." There is evidence we didn't
8 put on.

9 THE COURT: Let me see it. I think that's correct.
10 Let's keep it as the evidence. Just strike the word
11 government's. Okay. That's on page 65.

12 Mr. Weitzman, back to you, sir.

13 MR. SOLANO: Your Honor, I think we have one on
14 page 73, jury charge 49. Page 73.

15 THE COURT: Sir.

16 MR. SOLANO: Just at the end of this charge, the Court
17 is going to give the jury two examples, and our objection is to
18 including the last two sentences of the last paragraph as
19 examples, given how close they track to the alleged facts in
20 this case. So we think the law is accurately stated.

21 THE COURT: Let me look at it.

22 MR. RICHENTHAL: I have a proposal that may ameliorate
23 some or all of the defense concern as I understand it. The
24 reason the Court is doing this, which we think is not just
25 accurate, but essential, is to distinguish an honest services

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1 fraud from the other bribery charges who the act or the
2 official act can be. These are examples are to make clear to
3 the lay jury what the Court is doing.

4 If Mr. Solano is concerned that these examples are too
5 close to this case, one way to deal with it, indeed, perhaps
6 the best way, would be to change state official to non-federal
7 official. Simply make it more generic. That's the point, so
8 the lay jury understands what's going on. Or state or local,
9 for example. State or municipal.

10 In other words, if you make it more generic, then it
11 no longer looks like this case, but the lay jury still
12 understands what the Court is saying, which is there is an
13 important distinction in these charges.

14 MR. SOLANO: I think that's accurately captured by the
15 Court's prior sentence in which it says "For purposes of honest
16 services fraud, an official act may also be performed or caused
17 by a non-government federal official."

18 THE COURT: I'm sorry. I don't see that.

19 MR. SOLANO: A couple of sentences.

20 THE COURT: Aren't we on page 73?

21 MR. SOLANO: Yes, and a couple of sentences up.

22 THE COURT: Oh, I was looking immediately up. I see
23 it now. "For the purposes of honest services fraud, an
24 official act may also be performed or caused by a non-federal
25 government official."

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1 MR. SOLANO: So our concern is, again, the last
2 sentence starts, "So, for example, the use of one's official
3 position to exert pressure on a state official to perform an
4 official act is itself official action for purposes of honest
5 services fraud." Again, it tracks what the allegations are in
6 this case.

7 So, I appreciate Mr. Richenthal's suggestion, but I
8 don't think it cures the overall problem when you read it as a
9 whole.

10 MR. WEITZMAN: Your Honor, I have one more point to
11 add to that because we join in this request. I think the last
12 sentence in particular is problematic, I don't believe --

13 THE COURT: That's what we're talking about.

14 MR. WEITZMAN: There are two last sentences. I'm
15 saying the last sentence goes beyond what *McDonnell* authorized.
16 I can see a theory where pressure on a state official can
17 constitute official act, if you're using your official office
18 to exert that pressure. I don't know of any case where advice
19 to a state official can constitute an official act.

20 So I join that as well. I think this is a disputed
21 issue and I think that the sentence you have already earlier in
22 the paragraph suffices.

23 MR. RICHENTHAL: So, they now changed arguments, which
24 is fine. But this last argument is deeply wrong. Again,
25 *McDonnell* could not be more clear. It can be advice or

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1 pressure. The defense is not entitled to only ask the jury to
2 consider one theory. I don't know I need to say more on that.

3 As to the argument Mr. Solano first made, I think it
4 is ameliorated by changing the verbiage, which we're open to.
5 But to strike it entirely as crafted we have very, very serious
6 concern the jury will not understand what the Court is saying.
7 What the Court is saying is for these counts, the action can be
8 performed by a non-federal official. By the action we mean the
9 action sought through pressure or advice. Without linking
10 those two things, that is the second thing I just said, we
11 think the lay jury won't understand --

12 THE COURT: I got it. Let me look at it. Rather,
13 make your record.

14 MR. RICHENTHAL: I'm saying only the reason we think
15 the jury won't understand is the sentence that Mr. Solano
16 quoted beginning "for the purposes" isn't the last sentence even
17 under his own theory. The sentence would continue, "in all
18 other respects, however, the official act for the purposes of
19 honest services wire fraud is the same act for the purposes of
20 bribery." For the lay jury to know what that means, the jury
21 will have to flip back a number of pages, read the other
22 official act instruction.

23 THE COURT: This is what I'm going to do. I think
24 there is no harm in using examples, and I will make it a little
25 less track the evidence here. State or local in all three

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1 cases. So it will say, "So, for example, use of one's official
2 position to exert pressure on a state or local official." And
3 then later, similarly, "Using one's official position to
4 provide advice to a state or local official." And then "Such
5 advice will form the basis for an official act by a state or
6 local official." That's 73. Next.

7 MR. AGATA: Just if I can state for the record that,
8 like Mr. Hana's counsel, we're joining in all, for the record,
9 defense's objections, so it's clear we join in them.

10 THE COURT: Absolutely. Any objection raised by a
11 defendant is deemed to be raised by all the defendants. Go
12 ahead.

13 MR. WEITZMAN: So the same issue arises I think, your
14 Honor, in connection with the extortion count, charge 58. At
15 the end states in the last sentence, "That is, like with the
16 honest services wire fraud counts, the official act may involve
17 a non-federal official, unlike in the bribery counts, which
18 relate only to official acts by federal officials."

19 I think that's an incorrect statement of law. In each
20 of the counts, every single one of these counts, there has to
21 be official action by the federal official. That's what
22 *McDonnell* stands for.

23 MR. RICHENTHAL: I think they're just making a record,
24 but I'm happy to respond.

25 MR. WEITZMAN: It's more than making a record, your

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1 Honor.

2 THE COURT: A substantive request. Go ahead.

3 MR. WEITZMAN: *McDonnell* involved honest services wire
4 fraud, bribery, and extortion. All counts were reversed
5 because the instruction was incorrect as to whether there has
6 to be a use of official power in exerting advice or pressure.
7 There has to be a use of official power before you get to any
8 conviction.

9 THE COURT: So how does that last sentence differ,
10 what you just told me?

11 MR. WEITZMAN: Because the last sentence suggests that
12 there need not be, for either honest services wire fraud or
13 extortion, use of official power by the federal official.

14 MR. RICHENTHAL: So, docket no. 180, pages 66-67, this
15 has been rejected no fewer than three times by the Second
16 Circuit. It has been rejected in *Boylard*, in *Skelos*, rejected
17 in *Percoco*. It's also been reject by every other court in the
18 United States to ever consider it. It's just not the law.

19 MR. WEITZMAN: Under the government's theory --

20 THE COURT: Just a moment.

21 MR. WEITZMAN: Under the government's theory there
22 need not be any use of official action in order to convict for
23 honest services fraud or extortion.

24 So, I'll give you a hypothetical, your Honor. A
25 senator's good friends with the governor and says, unless you

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1 pass certain state legislature, I'm not inviting you to dinner
2 at my house any longer.

3 That will not be pressure as *McDonnell* identifies it.
4 It has to be official use of the office pressure. It has to be
5 something connected to his office to be pressure or advice. If
6 you are not linking the two, it could be something totally
7 personal and outside of the use of the office, which is not
8 what *McDonnell* authorizes.

9 MR. RICHENTHAL: Which is why the Court's charge
10 doesn't say that. The Court charge literally says use of
11 official position. They're making a different argument here.
12 It is an argument the Second Circuit has rejected three times.
13 It is an argument that Judge Caproni said in *Percoco*, which was
14 affirmed, is an argument -- and I'm now quoting -- that
15 misreads *McDonnell*, runs afoul of clear precedent, and defies
16 common sense.

17 THE COURT: Tell me what argument, how she states what
18 the argument was.

19 MR. RICHENTHAL: What she states, and this case was
20 affirmed by the Second Circuit, one of the three cases, this is
21 page 67 of docket 180. What she is he talking about is the
22 argument which I now think the defense is making, they've made
23 before in briefs, that only a person with formal power or
24 authority over the actions sought may be convicted of bribery.
25 In other words, as Mr. Weitzman keeps saying, only the

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1 senator's own actions count.

2 That was rejected by *McDonnell* itself. We talked
3 about that 10 or 15 minutes ago. And it's been rejected
4 repeatedly by the Second Circuit and every other court to
5 consider it for really good reasons. It would immunize huge
6 swaths of conduct against corrupt charges.

7 When I said the Court already made this point, the
8 "this" that I'm referring to is the idea that it has to be
9 official. The Court actually does this a few times, but we're
10 talking about the extortion charge right now. So in the
11 extortion charge itself, which is page 83, charge 58, the
12 first --

13 THE COURT: That's what we're dealing with.

14 MR. RICHENTHAL: The first sentence in the charge
15 reads "The third element that the government must prove beyond
16 a reasonable doubt is that Robert Menendez used the authority
17 of his public office." And then the sentence continues.

18 That's correct. We have to prove that. We think we
19 have. It will be up to the jury. But there is no doubt the
20 jury's being told that. What the defense wants is that only
21 action that he personally formally --

22 THE COURT: I've already ruled on that.

23 MR. WEITZMAN: That is not what I just asked for, and
24 I think he's intentionally distorting it. I'm asking --

25 THE COURT: Let's keep it on a professional level.

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1 MR. WEITZMAN: Yes, your Honor. I apologize.

2 I think what I'm asking is that you need to reinforce
3 that it has to be a use of the official authority in that last
4 sentence. Otherwise when you read it, it suggests that
5 non-official acts, non-official authority would suffice.

6 THE COURT: No, it doesn't. I don't see that. I'm
7 going to keep it as it is. Next.

8 MR. WEITZMAN: So, on instruction 65, the definition
9 of corruptly I think is too narrow and we would propose the
10 definition that we included in our instruction which is --

11 THE COURT: Let me take a look.

12 MR. RICHENTHAL: This is the argument your Honor
13 rejected 10 minutes ago.

14 MR. WEITZMAN: It is a different statute.

15 MR. RICHENTHAL: It is the same definition.

16 THE COURT: Let me find it, gentlemen. Where is your
17 request, sir, in the defendant's charge?

18 MR. WEITZMAN: Charge 75, the first paragraph, last
19 two sentences.

20 THE COURT: Haven't I just decided this, sir?

21 MR. WEITZMAN: I mean, you decided it with respect to
22 that language in connection with corrupt intent for purposes of
23 a different statute.

24 THE COURT: Got it. And all right. Government?

25 MR. RICHENTHAL: You did decide it with respect to a

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1 different part of the charge. I think the reasoning is equally
2 applicable. This is standard language.

3 THE COURT: It seems to me it is a different statute,
4 but it's still the same element, same issue. I'm keeping it as
5 I have it.

6 MR. WEITZMAN: My next one is charge 67. So, in the
7 second paragraph, where it says "FARA requires the registration
8 with the Department of Justice of anyone who is or acts as an
9 agent of a foreign principal." In the next sentence I would
10 propose striking "owes a duty of honest and faithful duty to
11 the public he serves."

12 So it reads, "However a public official cannot act as
13 an agent." I think that's the point. And I think conflating
14 honest services with FARA is confusing to the jury.

15 THE COURT: Government?

16 MR. RICHENTHAL: The reason we asked for this, and we
17 don't typically ask for purposes, is non-public officials can
18 engage in conduct if they register. Public officials can't.
19 That is, registration is not an out. That is maybe
20 comprehensible to a lawyer, I think it's probably a difficult
21 concept to a lay jury. This was an attempt just to explain at
22 a fundamental level what's going on, and it is not meant to put
23 a thumb on the scale. It is not meant to describe facts. It
24 is just meant for the jury not to be confused.

25 THE COURT: Let me just check something.

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1 MR. WEITZMAN: By the way, I'm not suggesting striking
2 that whole sentence. Just the words --

3 THE COURT: I understand. I'm going to grant the
4 defense request here. I'm going to strike the phrase "owes a
5 duty of honest and faithful service to the public he serves
6 and" so that sentence will now read, "However, a public
7 official cannot act as an agent of a foreign principal, even
8 though someone who is not a public official can, if he or she
9 registers with the Department of Justice."

10 Next.

11 MR. WEITZMAN: Skipping ahead, others may have
12 something beforehand, but my next instruction is 81.

13 MR. RICHENTHAL: I think next in order is the subject
14 of our letter. We've only conferred in part, so maybe we can
15 narrow those objections and we can proceed.

16 THE COURT: Let me go back to the letter.

17 MR. RICHENTHAL: Specifically, the first part of our
18 letter refers to instruction 70 which starts on page 97. We
19 have no --

20 THE COURT: I've got to find the letter.

21 MR. RICHENTHAL: We have no objection if Mr. Weitzman
22 wants to continue with the other objections.

23 THE COURT: Talk to each other now. You don't need me
24 for that. You were conferring, correct?

25 MR. RICHENTHAL: We were conferring. We had not

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1 completed it, so I don't know how much we'll be able to narrow,
2 but let's try.

3 THE COURT: Try it right now. I am going to step off
4 the bench. I'll be right back.

5 (Counsel conferring)

6 (Continued on next page)

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1 THE COURT: Where do we stand, counsel? Are we
2 getting close?

3 All right. We're back.

4 MR. SOLANO: Your Honor, we can put on the record at
5 least the two that we have reached agreement on, if you want.

6 THE COURT: Go ahead.

7 MR. SOLANO: The first one was the first issue raised
8 by the government's letter on ECF-504, and the instruction No.
9 70 at page 97.

10 THE COURT: You're talking about foreign agent,
11 request explained, correct?

12 MR. SOLANO: Correct.

13 The very last sentence starts currently with "the
14 ultimate question" and then goes on from there. The parties
15 have all agreed if we can insert at the beginning of that
16 sentence, "to that end, the ultimate question."

17 THE COURT: All right. "To that end, the ultimate
18 question, including based on the request."

19 MR. SOLANO: Yes.

20 THE COURT: I see. Let me just read it to see if it's
21 all right with me.

22 MR. SOLANO: Understood.

23 THE COURT: That's fine.

24 Next.

25 MR. SOLANO: And the next request, No. 71, page 98,

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1 I'll go to the areas of disagreement, and then, we have agreed
2 on the --

3 THE COURT: Let me look at my chart.

4 Yes, sir.

5 MR. SOLANO: In the instructions, the third and fourth
6 paragraphs set forth factors that may support or may count
7 against a finding of agency, and so for that reason, we've
8 agreed, and we'd suggest to the Court, if the Court's willing
9 to accept it, adding the word "may" in both paragraphs, so that
10 paragraph No. 3 would start, "factors that may support finding
11 an agency," and then go on from there. And paragraph No. 4,
12 would start, "conversely, the following factors may count
13 against finding an agency."

14 THE COURT: I have no objection to those two
15 additions. All right. We'll add those two may's.

16 MR. SOLANO: The last area of agreement, to make it
17 balanced, the government has requested, and we do not object,
18 to adding to paragraph 3 among the list of factors the
19 following.

20 THE COURT: Wait. This follows "receives feedback on
21 his work from the foreign principal"?

22 MR. SOLANO: Yes. I think we could add there -- I'm
23 not sure the government has a position on where they want it in
24 that paragraph, but as long as one of the factors listed is the
25 following: "The foreign principal's goals do not align with

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1 the alleged agent's own interests or subjective viewpoint."

2 THE COURT: Why don't we just make that -- we'll
3 strike the word "and" where it says "and where the person seeks
4 to receive feedback on his work" and then after foreign
5 principal, "if the foreign principal's goals do not align with
6 the alleged agent's own interests or subjective viewpoint."

7 Does that do it, gentlemen? I guess put "and" before,
8 "and if the foreign principal's goals do not align."

9 MR. SOLANO: I believe it does from our end, your
10 Honor.

11 THE COURT: OK. Fine. That's what we'll do.

12 MR. SOLANO: That was the extent of our agreement on
13 the two charges.

14 I think there was a third issue that the government
15 raised which they may want to argue on the bottom of page 4 of
16 their filing.

17 THE COURT: The bottom of page what?

18 MR. SOLANO: 4 of the filing, ECF-504.

19 THE COURT: Oh.

20 MR. SOLANO: The government has proposed additional
21 language to the second paragraph of instruction 71, to which
22 the defendants object.

23 THE COURT: All right.

24 Government, let me hear you.

25 MR. RICHENTHAL: Given the nature of this case, we had

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1 asked for the sentence on the bottom of page 4 of our letter to
2 be added about payment giving rise to a sense of obligation.
3 The reason we made that request is that --

4 THE COURT: Where would that go?

5 MR. RICHENTHAL: It would go in the paragraph
6 beginning "in determining whether."

7 THE COURT: Yes.

8 MR. RICHENTHAL: And here's why we're making that
9 request.

10 THE COURT: Let me read it. This is the one that came
11 in this morning.

12 Yes, sir. Go ahead.

13 MR. RICHENTHAL: So we're trying to think like
14 laypeople, and what's in that sentence, meaning the sentence
15 beginning "in determining," is the phrase "sense of
16 obligation." Our concern is that the average layperson would
17 not think that sense of obligation includes a compensation
18 relationship. People don't normally think of obligation as
19 driven by money. They think of it as driven by philosophical
20 factors, for example, and so what we suggested at the bottom of
21 page 4 was language, which is permissive, not directive, can
22 give rise, that makes clear that obligation could include a
23 compensation relationship.

24 The exact language, I will say, is not the point for
25 us. It's to avoid the misimpression that obligation refers to

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1 something outside of a compensation-based relationship.

2 MR. WEITZMAN: Your Honor, I think that this is a
3 directive. It's effectively saying if there's any finding of
4 compensation, then that creates an agency relationship. And
5 it's unnecessary, your Honor, because when you look at the
6 factors that you've already included, one of them is
7 compensation, the second in the third paragraph, "if
8 instructions or requests are coercive or are accompanied by an
9 offer of the provision of compensation."

10 THE COURT: All right. I'm not going to add the
11 government's request here. I'll add what we just put on the
12 record but not this sentence that says accepting payment can
13 give rise to a sense of obligation such that, etc.

14 All right.

15 MR. WEITZMAN: My next one is charge 81. And I think
16 this is consistent with where the parties are at, although I've
17 not run it by the government, what I'm asking for is an
18 instruction at the end of paragraph 81 that states that no
19 codefendant is or can be a foreign principal. I think the law
20 is that a U.S. citizen cannot be a foreign principal.

21 MR. RICHENTHAL: That's true, but a U.S. citizen can
22 be an intermediary for a foreign principal. So if we add that,
23 I think we need to add what I just said; that is, Mr. Hana can
24 be, indeed, we believe the evidence shows, that he was an
25 intermediary for a foreign principal and same with

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1 Ms. Menendez. The Court's instructions don't get to that
2 level. My only point is that the jury will have the
3 misimpression it's binary, foreign principal or not. In fact,
4 it's in between, an intermediary.

5 MR. WEITZMAN: Your Honor, this is why we requested in
6 our instruction that the government be required to identify who
7 they're alleging is the foreign principal.

8 THE COURT: I just don't think that's the law. You
9 want specificity. I don't see anywhere that that's the law.

10 MR. WEITZMAN: I understand, your Honor. We're
11 preserving that issue. Right now the ambiguity in the
12 instruction is that maybe Mr. Hana is the foreign principal
13 because he's Egyptian or maybe Ms. Arslanian, because she's
14 Lebanese. And that's not the law. They cannot be the foreign
15 principal. Whether they're acting on behalf or as an
16 intermediary is a different issue, but I think the jury needs
17 to understand who can or cannot be a foreign principal.

18 MR. RICHENTHAL: So just to be clear, the Court's
19 instruction says -- this is the penultimate sentence on the
20 bottom of 15 -- As to Count Fifteen, the government charges
21 that the goal of the conspiracy was to have a public official,
22 Robert Menendez, act as an agent of a foreign principal; that
23 is, the government of Egypt and Egyptian officials.

24 We're not going to argue that Ms. Menendez or Mr. Hana
25 was the government of Egypt. We're not going to argue that Ms.

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1 Menendez or Mr. Hana are Egyptian officials, because they're
2 not. It's just not going to be said to the jury. So to the
3 extent there's a definition, it's right here. The government
4 of Egypt and its officials. What we're resisting is saying the
5 negative, suggesting --

6 THE COURT: I understand.

7 Mr. Weitzman, Mr. Richenthal is correct. The
8 government charges that the goal of the conspiracy was to have
9 a public official, Robert Menendez, act as an agent of a
10 foreign principal; that is, the government of Egypt and
11 Egyptian officials. I think that really does it for you.

12 MR. WEITZMAN: Yes. I think the addition of a U.S.
13 citizen may not be -- whether we identify codefendants or
14 not --

15 THE COURT: But what this says is that the foreign
16 principal alleged is the government of Egypt and Egyptian
17 officials. It's right there. I think you have it.

18 MR. WEITZMAN: The next one I've got is --

19 THE COURT: I'm not adding what the defense is
20 requesting.

21 Sir, go ahead.

22 MR. WEITZMAN: Venue.

23 THE COURT: Yes, sir.

24 MR. WEITZMAN: Charge 87, I think there are references
25 throughout to any act, and I think it should just say any overt

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1 act.

2 THE COURT: Government.

3 MR. RICHENTHAL: So, it depends what reference we're
4 talking about. Right? There are times when overt act is
5 what's required. There are times --

6 THE COURT: That certain counts have overt act
7 requirements --

8 MR. RICHENTHAL: Right.

9 THE COURT: -- and others don't.

10 Now your turn.

11 MR. RICHENTHAL: Since we're talking about venue, I
12 will just say we also have our own suggestion. When the case
13 law talks about --

14 THE COURT: Wait. Let's deal with Mr. Weitzman's
15 first.

16 I think that's correct, sir. It depends on the
17 statute.

18 MR. WEITZMAN: While it is correct, your Honor, I
19 think that in the first sentence, for example, there is no
20 reference to overt act, and so when you're discussing acts in
21 furtherance of the crimes charged, I think you're referring to
22 overt act in that context.

23 THE COURT: Government.

24 MR. RICHENTHAL: So, the problem is there are counts
25 here that don't have overt acts, and so the word "overt" has no

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1 meaning to the jury for those counts, because they don't --

2 THE COURT: I think given the fact that some of the
3 counts require overt acts and others don't, it's cleaner if we
4 just say any act. Yes, I agree with the government on that.

5 MR. WEITZMAN: OK. Then when you're discussing the
6 substantive counts --

7 THE COURT: Yes, sir.

8 MR. WEITZMAN: -- with respect to the substantive
9 counts resting on a bribe being demanded, so on and so on and
10 so on, at the end of the paragraph, you have "including acts
11 that were part and parcel of this conduct," and I don't think
12 that's correct statement of law of venue with respect to
13 substantive counts. So it appears twice in that paragraph and
14 in the next paragraph, and it's an undefined issue. What is
15 part and parcel of conduct?

16 MR. RICHENTHAL: That language is from *United States*
17 *v. Stephenson*, which is a Second Circuit case. It's cited as
18 one of the several authorities in our requests to charge.

19 THE COURT: All right. Let me pull up *Stephenson*.

20 MR. RICHENTHAL: We're looking for the cite right now,
21 your Honor.

22 THE COURT: What's the citation?

23 MR. RICHENTHAL: *United States v. Stephenson*, 895 F.2d
24 867, at pages 874 to 875. In that section of the decision, the
25 Second Circuit is upholding venue where phone calls to New

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1 York -- let me start by giving the quote. The quote begins:
2 "Calls to New York were part and parcel of the offense of
3 demanding, seeking and agreeing to receive a bribe."

4 I incorporated certain alterations when I said that.
5 the case says demand, seek and agree instead of demanding,
6 seeking and agreeing, but that's a quote. It's a bribery case
7 from -- I believe I can give the year. It's a Second Circuit
8 case from 1990.

9 THE COURT: All right. I'll pull that up.

10 Just so the parties know, I think I may have something
11 in the concluding instructions -- I may have taken it out --
12 saying that if they want any evidence they can ask for it.
13 What we now do, assuming the parties agree, is put everything
14 on a thing that can then go into a computer that's put in the
15 jury room. So they will have all of the evidence on these --
16 I'm not sure what they're called --

17 MR. FEE: USB.

18 THE COURT: That's it, USBs. That makes it a lot
19 easier, and the computer will only be able to access that.

20 All right. Government, any issue?

21 MR. RICHENTHAL: No. We think that's fine.

22 THE COURT: OK. Mr. Lustberg, Mr. De Castro.

23 MR. LUSTBERG: No issue, your Honor.

24 MR de CASTRO: No issues, your Honor.

25 MR. SOLANO: No issue, your Honor.

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1 MR. WEITZMAN: No issue, your Honor.

2 THE COURT: All right. Fine. That's what we'll do.

3 All right. I'm reading *Stephenson* now. 874, 875.

4 Yes, it's there. OK. I'm going to keep that language
5 in.

6 MR. WEITZMAN: I have one more to propose on venue.

7 THE COURT: Yes, sir.

8 MR. WEITZMAN: Your Honor, in the paragraph that
9 starts "With respect to conspiracy offenses," and it ends with
10 the foreseeability standard, I would just add -- and I think
11 this is noncontroversial -- at the end of the last sentence of
12 that paragraph "to the defendant you are considering." So it
13 should say: "The act need not be taken by a defendant or a
14 conspirator as long as the act is caused by the conduct of the
15 defendant or conspirator and was reasonably foreseeable to the
16 defendant you are considering."

17 THE COURT: Absolutely. I have no objection.

18 MR. RICHENTHAL: Agreed, and this actually dovetails
19 nicely with the only comment we have on venue.

20 THE COURT: Let's make sure that we have that. That
21 sentence will now read: "The act need not be taken by a
22 defendant or a conspirator as long as the act was caused by the
23 conduct of the defendant or conspirator and was reasonably
24 foreseeable to the defendant you are considering."

25 Thank you, Mr. Weitzman.

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1 MR. RICHENTHAL: And this dovetails nicely with the
2 only comment we had on venue. There are a few times,
3 including, I think, the first sentence, where the proposed
4 charge says foreseeable but doesn't have the word "reasonably"
5 before it. We think it should always be reasonably
6 foreseeable, as it is here.

7 THE COURT: I have no objection. So when foreseeable
8 occurs in charge 87, venue, we'll put reasonably foreseeable.

9 MR. RICHENTHAL: And I think it comes up a few times.

10 THE COURT: All right. Tell me where.

11 MR. RICHENTHAL: We noticed the first sentence.

12 THE COURT: Reasonably foreseeable occurred within the
13 Southern District of New York.

14 MR. RICHENTHAL: And then in the second paragraph, the
15 sentence beginning "a preponderance of" ends by saying
16 foreseeably occurred. So again, it would be reasonably
17 foreseeably occurred.

18 THE COURT: Reasonably foreseeably occurred.

19 MR. RICHENTHAL: Then in the next sentence, that's the
20 last sentence that ends on page 126, it right now ends
21 "foreseeably occurred," so it's the same phrasing.

22 THE COURT: Oh, add in reasonably there.

23 MR. RICHENTHAL: Correct. I think those are the only
24 times, if we caught it, other than the sentence beginning "with
25 respect to conspiracy offenses," which we just talked about.

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1 So on page 127, the first, the paragraph that begins "with
2 respect to the conspiracy offenses," that sentence, the word
3 "reasonably" should be inserted before foreseeably occurred.

4 THE COURT: Now I'm not sure where you are. The
5 paragraph that begins "with respect to the substantive counts
6 resting on the bribe." Go ahead.

7 MR. RICHENTHAL: No. The prior paragraph, your Honor.
8 The one beginning "with respect to the conspiracy offenses."

9 THE COURT: We already have in reasonably foreseeable
10 to the defendant you are considering.

11 MR. RICHENTHAL: No. The first sentence in the
12 paragraph that begins "with respect to the conspiracy offenses,
13 as I said."

14 THE COURT: That's right. Reasonably --

15 MR. RICHENTHAL: Exactly.

16 THE COURT: -- Foreseeably occurred. OK. Done.

17 MR. AGATA: If I can just ask one question. I may
18 have missed it. That paragraph with respect to the conspiracy
19 offenses, did we insert the word "overt" act?

20 THE COURT: No. We're not using overt act.

21 MR. AGATA: With respect to conspiracy? OK.

22 MR. RICHENTHAL: I thought this was the issue we
23 resolved. I'm sorry. There are conspiracy counts here that
24 don't have overt acts so we think it's going to mislead the
25 jury.

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1 THE COURT: Exactly. You've preserved that.

2 MR. AGATA: Thank you, your Honor.

3 THE COURT: All right.

4 That's it?

5 MR. SOLANO: Your Honor, I think there are a couple
6 more. We have one. On 84, multiple conspiracies.

7 THE COURT: Yes, sir.

8 MR. SOLANO: We had just asked, your Honor did this
9 elsewhere when you described the elements, you reminded the
10 jury from time to time that it has to be found beyond a
11 reasonable doubt.

12 THE COURT: Yes.

13 MR. SOLANO: And so here, we would just ask that that
14 be done.

15 THE COURT: Where?

16 MR. SOLANO: I think the logical place would be the
17 second paragraph, towards the end it says "is a question of
18 fact for you, the jury, to determine" and insert "beyond a
19 reasonable doubt." The second full paragraph, second sentence.

20 THE COURT: What's the view of the government?

21 MR. RICHENTHAL: So, Mr. Solano and I conferred at the
22 break about this. We didn't reach agreement. I appreciate
23 him, therefore, raising for the Court.

24 It's obviously the case that to the extent we have a
25 burden it's beyond a reasonable doubt other than with respect

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1 to venue. The problem here is we don't have to prove, or to
2 put a finer point on it, the jury doesn't have to find any
3 particular number of counts for conspiracy. What they have to
4 find is that the charged conspiracy existed.

5 Mr. Solano's language, I think it's unintentional, to
6 my ear, suggests the jury must be unanimous on the number of
7 conspiracies. That's not so. They simply have to be unanimous
8 as to whether we've proven the ones we've charged. If several
9 of the jurors thought there was some other conspiracy and their
10 colleagues didn't think so, that's fine, as long as they're
11 unanimous on the one we've charged. So the language Mr. Solano
12 proposed, in our view, would inadvertently, I think, mislead
13 the jury into thinking it must be unanimous as to the precise
14 number of conspiracies. That's not so. They just have to be
15 unanimous that we've met our burden that the charged ones
16 existed.

17 MR. SOLANO: It's certainly not intended to reach that
18 conclusion. It was more direct, to simply say that there has
19 to be a single conspiracy found beyond a reasonable doubt.

20 Let me see if there's another place to put it.

21 MR. RICHENTHAL: One way to do that -- I'm doing this
22 in the moment. I suppose if that's the concern, the sentence
23 beginning "whether there existed" could read "whether the
24 government has proven there existed."

25 We fully embrace our burden. We just don't want to go

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1 beyond our burden.

2 MR. SOLANO: Actually, I think that would be
3 acceptable. Can we add "whether the government has proven
4 beyond a reasonable doubt a single unlawful agreement"? That
5 would be acceptable.

6 MR. RICHENTHAL: Well -- sorry.

7 THE COURT: Yes.

8 MR. RICHENTHAL: This is the danger of thinking in the
9 moment. I apologize.

10 So, I'm going to take back my suggestion, and here's
11 why.

12 The rest of this sentence refers to whether the jury
13 concludes there's multiple agreements. We don't have to prove
14 multiple agreements. Actually, unfortunately, I have suggested
15 something that creates the very problem I'm trying to avoid.

16 Put differently, we have to prove the charged
17 conspiracies existed and the defendant they're considering was
18 a member.

19 THE COURT: I'm going to keep it the way it is,
20 gentlemen.

21 All right. Next? Anything?

22 MR. WEITZMAN: Yes, your Honor.

23 We'd request a missing witness instruction, which we
24 had proposed.

25 THE COURT: What's the theory?

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1 MR. WEITZMAN: Your Honor, we subpoenaed a number of
2 potential witnesses. We've subpoenaed the two AUSAs who
3 handled the Daibes case. We subpoenaed someone from the State
4 Department. We subpoenaed someone from the U.S.D.A. We made
5 *Touhy* requests to the U.S. Attorney's Office and of those
6 agencies, and they were declined.

7 THE COURT: I don't think I was aware of that.

8 MR. WEITZMAN: Yes. And so there's at least four or
9 five witness, plus there's the Heritage witnesses, which we
10 believe -- I understand your Honor may view it differently.

11 THE COURT: I'm shaking my head negatively because
12 we've been over that with Heritage, but go ahead.

13 MR. WEITZMAN: Yes, but I think if the government had
14 asked for their testimony, they would have received it.

15 THE COURT: No, sir. There's nothing in the record to
16 suggest that.

17 MR. WEITZMAN: In any event, the *Touhy* requests, at a
18 minimum, that we've made for numerous witnesses from the
19 U.S.D.A., U.S. Attorney's Office and U.S. State Department are
20 clearly not equally unavailable. They're in the control of the
21 government, as are the ten AUSAs who attended the Abbe Lowell
22 presentation but who were not called.

23 THE COURT: Let me see. I took that out. Let me see
24 that charge in your draft, sir.

25 MR. WEITZMAN: It's page 36 of our draft.

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1 MR. RICHENTHAL: I'm happy to respond whenever the
2 Court would like.

3 THE COURT: Missing witnesses including not available
4 to the defendant, is that what you're referring to?

5 MR. WEITZMAN: Correct, your Honor.

6 THE COURT: This is basically Sand.

7 MR. WEITZMAN: Yes.

8 THE COURT: Let me just read it.

9 Yes. Government.

10 MR. RICHENTHAL: There's a process for *Touhy*. The
11 defense engaged in it as to some but notably not all of the
12 people he just identified. The process was completed. We, the
13 prosecution team, do not control it. To our knowledge, the
14 defense was satisfied with the process. Indeed, they were able
15 to call the witnesses they believed offered material testimony
16 in their case, including Mr. Khanna, who we chose to call
17 instead but who testified when subject to cross, including
18 Sellinger.

19 The other people, to the extent they were denied, were
20 denied because they have utterly immaterial and inadmissible
21 evidence.

22 THE COURT: What was denied?

23 MR. RICHENTHAL: So, I'm not intimately familiar with
24 the ins and outs of the *Touhy* process, but I can say, in sum,
25 my understanding is what was denied was, for example, calling

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1 to testify the line assistant U.S. attorneys in the District of
2 New Jersey about not being influenced by Mr. Sellinger's
3 refusal. Of course, that's already in the record. That's
4 nothing the jury needs to hear about. It's not even disputed.
5 I think they tried to call two different line assistant U.S.
6 attorneys for that purpose. Mr. Sellinger himself testified.

7 THE COURT: You said they tried to call. Under this
8 process what happened.

9 MR. RICHENTHAL: So, the civil division of the U.S.
10 Attorney's Office leads the *Touhy* process with respect to the
11 Department of Justice. Other agencies of the United States
12 have their own general counsel's offices and their own
13 processes. We don't control the U.S. Department of
14 Agriculture, for example, but those departments, to my
15 knowledge, had a liaison role with the U.S. Attorney's Office
16 civil division.

17 If Mr. Weitzman had been unhappy with the result of
18 this process, he could have raised it -- I'm not
19 exaggerating -- months ago. To raise it at the charge
20 conference suggests out there there's witnesses with material
21 testimony. That's the quote, material testimony.

22 THE COURT: This is something I was unfamiliar with in
23 terms of the specifics until this moment.

24 Go ahead.

25 MR. RICHENTHAL: My point, with respect, is even if

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1 *Touhy* did not exist -- that is, even if there were no process
2 at all -- the defense correctly, in the footnote, says this
3 instruction should only be given if applicable. The "if
4 applicable" refers to a proper basis in evidence or the record
5 before this Court that there is material testimony -- that's a
6 direct quote -- that could have been given that the defense
7 could not procure. They have identified none because there
8 isn't any. It would be wildly improper at the last minute to
9 suggest there's some magic witness out there they couldn't get,
10 even if there were no process, which, of course, they actually
11 went through and, to my knowledge, didn't object to.

12 MR. WEITZMAN: We did object, your Honor. We
13 subpoenaed the witnesses and then --

14 THE COURT: Before me?

15 MR. WEITZMAN: No, not before you, your Honor. We
16 objected with the U.S. Attorney's Office and with the agencies.
17 We subpoenaed the witness, I believe it was Mr. Abdi, from the
18 U.S.D.A. We subpoenaed a witness from the State Department,
19 Ms. Cressy. We subpoenaed the two AUSAs who were in charge of
20 the Daibes prosecution, and we were told that Vikas Khanna
21 would be able to answer all questions regarding the Daibes
22 prosecution, and instead he pled ignorance.

23 We also were denied the opportunity, your Honor, to
24 question an employee of the U.S. Attorney's Office regarding
25 the substance of the presentation by Abbe Lowell, and I am sure

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1 that if we sought to subpoena Damian Williams or any of the
2 AUSAs who were present there, that would have been denied.

3 The charge just says that if you believe that there
4 are witnesses who were in the control of the government and you
5 didn't hear from them, you can hold it against the government.

6 THE COURT: But presumably you're going to argue those
7 individuals in the summation.

8 MR. WEITZMAN: Correct, your Honor, and they need to
9 be told that that's a proper inference for them -- just in the
10 same way that, right now, there's only one charge on missing
11 witnesses and it's equally unavailable.

12 THE COURT: Right.

13 MR. WEITZMAN: But not all missing witnesses were
14 equally unavailable. There were some available to the
15 government and not available to the defense. We tried
16 subpoenaing them and we were refused.

17 MR. RICHENTHAL: That's just so false it's offensive.
18 That is not the process.

19 THE COURT: Gentlemen, gentlemen --

20 MR. RICHENTHAL: I'm sorry.

21 THE COURT: Gentlemen, gentlemen --

22 MR. RICHENTHAL: Your Honor, this instruction is
23 designed to put the people at this table on trial. It is
24 wrong. It is misleading. It should have no business before
25 this jury. There is none -- none -- anything in the record at

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1 all about what these people, some of whom they didn't even
2 attempt to procure a subpoena for, would have said that this
3 jury has any business hearing about. If the defense wants to
4 argue that Mr. Sellinger's recusal had no effect on the case,
5 there is abundant evidence, including from the mouth of Mr.
6 Sellinger. The assistant U.S. attorneys they wanted to call --

7 THE COURT: Sellinger did say there was no effect.
8 That's correct.

9 MR. RICHENTHAL: So did Mr. Khanna. It's not actually
10 even just Mr. Sellinger, and it's not disputed. We don't
11 intend to argue it. So they purport to want the jury to think
12 there are witnesses out there with exculpatory information
13 when, in fact, they know it does not exist. It is wildly
14 improper. It is wildly belated. It should be denied.

15 MR. WEITZMAN: Histrionics aside, your Honor --

16 THE COURT: Yes.

17 MR. WEITZMAN: -- the fact that we were denied the
18 opportunity to question a witness about what was said by Mr.
19 Lowell, the fact that there were numerous AUSAs --

20 THE COURT: We've been over that. Go ahead.

21 MR. WEITZMAN: -- and U.S. Attorney and the deputy
22 U.S. Attorney and the chief of the criminal division, none of
23 which we could have called, are missing witnesses in the
24 government's control. We're not putting the government on
25 trial here, but it's an accurate statement.

O78Wmen4

1 THE COURT: Well, I think you are.

2 MR. WEITZMAN: It's an accurate statement.

3 THE COURT: You're making that argument, and I
4 certainly would have appreciated knowing of this issue before
5 2:10 in the end of the charging conference.

6 MR. WEITZMAN: Yes, your Honor. I apologize for that.
7 We did request the instruction. I understand that we did not
8 alert your Honor to the numerous *Touhys* that were refused.

9 THE COURT: All right. I'm not going to grant the
10 request. You have the witness charge that's in there.

11 All right. Does that do it?

12 MR. RICHENTHAL: Just for the record, the *Touhys* that
13 were allegedly denied, that's not an accurate statement -- it's
14 a mixed bag because of the process -- that all happened before
15 trial. When I said months, the date of the documents I'm
16 referring to is May 10, 2024.

17 MR. WEITZMAN: They were denied. They were denied.

18 THE COURT: Gentlemen, enough.

19 MR. SOLANO: One last issue.

20 THE COURT: Yes.

21 MR. SOLANO: I think it will be noncontroversial.

22 We started beyond this, but instruction No. 4 -- I'm
23 sorry, No. 6.

24 THE COURT: You're going to instruction No. 6. All
25 right.

O78Wmen4

1 MR. SOLANO: This is the last one we have.

2 On page 13, where the Court is going to instruct the
3 jury on reasonable doubt --

4 THE COURT: Yes.

5 MR. SOLANO: -- our request.

6 THE COURT: Reasonable doubt. My reasonable doubt
7 charge has not, assuming this is my usual reasonable doubt
8 charge, which I believe it is, not a single word has changed.
9 It was specifically approved by the Second Circuit in another
10 case. But go ahead, sir.

11 MR. SOLANO: I appreciate where this is going to go
12 for me then, but the request was a single sentence that said a
13 reasonable doubt may arise from the evidence or the lack of
14 evidence. I think your Honor has given that sentiment
15 elsewhere, but it's particularly important and supported by the
16 case law in this instruction, so that would be it, to add a
17 sentence that said "a reasonable doubt may arise from the
18 evidence or the lack of evidence."

19 THE COURT: Government.

20 MR. RICHENTHAL: I think your Honor's charge, which
21 has been given since time immemorial, is good and consistent
22 with the case law, and there's no reason to mess with it.

23 THE COURT: Well, I haven't been on the bench since
24 time immemorial, although in this case it seems like I have
25 been. I'm going to keep the charge as I've always had it.

O78Wmen4

1 Thank you, Mr. Solano.

2 All right. We have a charge. It's ten after. Get
3 some lunch. The jury's coming at 20 after. Be back at 2:40.
4 All right? And we'll go into the government's summation.

5 Thank you, all.

6 (Luncheon recess)

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O78Wmen4

AFTERNOON SESSION

2:40 p.m.

THE COURT: All right. Bring the jury in.

You may be seated in the courtroom.

MR. MONTELEONI: In terms of trying to plan when to take a break --

THE COURT: I think with the jury probably it is a little awkward, but it would be two and a quarter hour stints, so I think they do need a break, yes.

MR. MONTELEONI: I'll try to look for a good time when I'm switching, if that's all right.

THE COURT: Yes, sure. Probably around -- it's now quarter to three -- around 4:15, something like that, between four and 4:15.

MR. MONTELEONI: Understood, your Honor. And then there's also in terms of where we break for the day, I think that there's a point that I can identify that I think we're likely to hit at five. It's a little before or a little after.

THE COURT: All right. The jury has indicated on a couple of occasions that they want to go home at five, but you have some leeway, of course.

MR. MONTELEONI: All right. Thank you, your Honor.

THE COURT: As a matter of fact, probably at the break, I'll have my deputy ask if they could stay a little later tonight.

O78Wmen4

Summation - Mr. Monteleoni

1 MR. MONTELEONI: That's fair. It might be a couple
2 minutes before five also.

3 THE COURT: I understand. I want as few interruptions
4 as possible for all summations.

5 (Jury present)

6 THE COURT: You may be seated in the courtroom.

7 Good afternoon, ladies and gentlemen.

8 Now, you know you have heard all of the evidence.
9 What remains are the summations. You know several things about
10 the summations. You know the order of summations is set by
11 law. The parties have no say in it. The government gets the
12 first summation, and then each of the defendants will have his
13 own summation, by his attorneys. And then the government gets
14 a rebuttal summation. As I said, I think that derives from the
15 fact that the government bears the burden of proof at all
16 times, and you know what that burden of proof is.

17 The government bears the burden of proving its case
18 against each defendant beyond a reasonable doubt, and you must
19 presume each defendant to be innocent until such time, if ever,
20 you determine that the government has met its burden of proof
21 in proving the defendant you are considering to be guilty
22 beyond a reasonable doubt.

23 You also know that what these lawyers are going to
24 tell you is not evidence. That's important. They will tell
25 you, I think, what they think, what they believe the evidence

O78Wmen4

Summation - Mr. Monteleoni

1 showed and almost certainly what conclusions they ask you to
2 draw from that evidence. But it is not evidence. I want you
3 to listen to what they have to say, but you decide what the
4 evidence is. They don't.

5 Also, I'm the one who gives you instructions on the
6 law. The lawyers don't. Now, they may say in the course of
7 their summations that they believe the judge will instruct you
8 later on thus and so. That's perfectly OK. But what's
9 important is that you indeed listen to my instructions, not
10 what they say the instructions are going to be or they think
11 they're going to be.

12 All right. The first summation is by Mr. Monteleoni
13 on behalf of the government.

14 Sir.

15 MR. MONTELEONI: Thank you.

16 THE COURT: And what we'll do is take a short break at
17 some point, because otherwise it would be two and a quarter
18 hours. That's too long. And around five, a little before or a
19 little after, we'll find a logical time in Mr. Monteleoni's
20 presentation to break. And then we'll pick it up tomorrow.

21 Sir.

22 MR. MONTELEONI: Thank you, your Honor.

23 On June 16, 2022, the FBI searched the home of Robert
24 Menendez and his wife Nadine. They found envelope after
25 envelope of cash -- cash stuffed in bags, cash stuffed in the

O78Wmen4

Summation - Mr. Monteleoni

1 pockets of Menendez's jackets, cash stuffed in Menendez's
2 boots. They found a Mercedes-Benz convertible in the garage.
3 They found 11 one-ounce gold bars worth about \$20,000, two
4 one-kilogram gold bars worth almost \$60,000 each. And that
5 day, other FBI agents seized phones from Menendez and his wife.
6 You saw what they found on those phones. They found evidence,
7 like photos of more gold, two more kilo bars, five more
8 one-ounce bars -- on top of the ones that were found in the
9 house -- and messages about more payments, payments to
10 Menendez's wife for a fake job, payments to the company holding
11 the mortgage on the very house that the FBI was searching, and
12 they found evidence of Menendez directing and receiving reports
13 from his wife as she collected those things for them.

14 At this trial, you learned where these things came
15 from. You learned that they were bribes that Menendez took
16 from Wael Hana and Fred Daibes in exchange for promises of
17 official action. Those payments to the mortgage company and to
18 Nadine for the fake job, Wael Hana made them through the halal
19 company that the government of Egypt set him up with during
20 this scheme. Envelope after envelope of the cash that was
21 found at the Menendezes' home, Fred Daibes gave it. His
22 fingerprints were all over the tape sealing up those envelopes,
23 sometimes Menendez's fingerprints too. Other envelopes of cash
24 were from people close to Hana. That Mercedes in the garage,
25 Hana first promised it, but it was finally delivered by José

O78Wmen4

Summation - Mr. Monteleoni

1 Uribe, texts and payment records make clear as day. And that
2 gold, that gold came from both Hana and Daibes. You saw the
3 serial numbers match up. Hana gave seven one-ounce gold bars.
4 Daibes gave nine one-ounce gold bars. And he also gave the
5 four big ones, the one-kilo gold bars.

6 Why? Why did Daibes and Hana shower Menendez and his
7 wife with these valuables? What were they getting when they
8 parted with hundreds of thousands of dollars of gold, cash and
9 other payments?

10 The promise of power. Robert Menendez, the senior
11 U.S. senator from the state of New Jersey, the ranking member
12 and then chairman of the Senate Foreign Relations Committee,
13 put his power up for sale. It wasn't enough for him to be one
14 of the most powerful people in Washington. It wasn't enough
15 for him to be entrusted by the public with the power to approve
16 billions of dollars of U.S. military aid to foreign countries.
17 It wasn't enough for him to have the ability to recommend who
18 the president nominates to be the chief federal law enforcement
19 officer for New Jersey.

20 No. Robert Menendez wanted all that power, but he
21 also wanted to use it to pile up riches for himself and his
22 wife. So Menendez sold the power of his office. He promised
23 to take actions for Hana and Daibes in exchange for those
24 bribes. He promised to approve military aid to Egypt, to
25 provide Egypt with sensitive information about Americans

O78Wmen4

Summation - Mr. Monteleoni

1 stationed abroad and to help Egypt in other ways. He promised
2 to pressure a U.S. Department of Agriculture official to stop
3 opposing the monopoly that Egypt was giving to Hana's halal
4 certification company. He promised to pressure the New Jersey
5 attorney general to disrupt a criminal investigation and
6 prosecution of associates of Hana and Uribe. He promised to
7 recommend a candidate for U.S. Attorney for the District of New
8 Jersey who he thought he could influence to affect Daibes's
9 federal criminal prosecution, and Daibes asked him to advance a
10 resolution praising the government of Qatar, which Daibes
11 thought would help him land a multi-million dollar investment.

12 Through the course of this trial, you've seen exactly
13 how they did it. You heard all the evidence. You heard how a
14 sitting U.S. senator took hundreds of thousands of dollars of
15 bribes from two businessmen in exchange for the promise to use
16 his official power to enrich them and to protect them and their
17 associates from anyone in the government who would stand in
18 their way. You saw again and again a clear pattern of
19 corruption. Again and again, from promises of military aid to
20 requests to advance a Senate resolution, from seeking to
21 influence the Department of Agriculture to influencing the New
22 Jersey U.S. Attorney's Office, seeking to influence that or the
23 New Jersey attorney general's handling of a state insurance
24 fraud prosecution, the pattern was the same. Menendez was in
25 charge. His wife, Nadine, was his go-between, demanding

O78Wmen4

Summation - Mr. Monteleoni

1 payment, receiving payment and passing messages, but always --
2 always -- keeping him informed, and in which Hana and Daibes,
3 sometimes along with José Uribe, they would identify the people
4 they wanted to protect, identify the acts they wanted performed
5 for foreign governments to advance their own businesses and
6 provide the bribes that ended up in Menendez and Nadine's
7 house, one scheme to protect and enrich the people who were
8 paying bribes to Menendez.

9 What I'm going to do in this closing argument is go
10 through each of the charges. And I'm going to go through each
11 element -- that is, each part of each charge -- and I'm going
12 to show how the evidence that you've seen at trial proves each
13 element beyond a reasonable doubt. There's been a lot of
14 evidence, and there are a number of counts. So I'm going to be
15 going through them for the rest of the day today and for some
16 tomorrow to explain how every part of every count is proven.
17 And after getting through that last count, I'll sum up a few
18 points that apply to all the counts.

19 Now, let's talk about these elements.

20 Judge Stein will instruct you on the law, and those
21 instructions control, but I'm going to talk today about what I
22 expect he'll instruct you. I'm going to go count by count,
23 talk about how the evidence that you've seen in this trial
24 establishes each of the elements beyond a reasonable doubt.
25 And I'm just going to talk about the most relevant portions of

O78Wmen4

Summation - Mr. Monteleoni

1 the evidence here, but if there's something you want to see
2 more of, you'll have it all available to you in the jury room.

3 First, let's go over what the counts of the indictment
4 are. There are 18 counts, but they fall into a few general
5 groups.

6 First, there are corruption counts related to the
7 Egypt conduct. That includes both Menendez's promise to aid,
8 promises to aid the government of Egypt in various ways and
9 also to protect Hana's halal monopoly that the government of
10 Egypt gave him. This group of counts includes charges against
11 all of the defendants.

12 So, second, there are corruption counts related to the
13 New Jersey attorney general conduct; that is, Menendez's
14 promise to disrupt the New Jersey State prosecution and
15 investigation by contacting the New Jersey attorney general,
16 Gurbir Grewal. These include charges against Menendez and
17 Hana.

18 Third, there are corruption counts related to the New
19 Jersey U.S. Attorney and Qatar conduct; that is, Menendez's
20 promise to disrupt Daibes's federal prosecution and his
21 attempts to help Daibes get the investment from this company
22 linked to Qatar. These include charges against Menendez and
23 Daibes.

24 Now, fourth, there are the corruption conspiracy
25 counts, which include between them agreements to commit all of

O78Wmen4

Summation - Mr. Monteleoni

1 those corruption offenses. As I expect the judge will instruct
2 you, a conspiracy to commit a crime is just an agreement to
3 commit a crime, and that's a separate charge from the charges
4 for the underlying crimes in those first three groups. And
5 those are what the law calls substantive offenses. So these
6 corruption conspiracy counts include charges against all the
7 defendants.

8 Fifth, there are the foreign influence counts. Those
9 relate to Menendez's actions and promise to act on behalf of
10 Egypt while he was a U.S. senator. These include charges
11 against Menendez and Hana.

12 And finally, there are the obstruction counts. Those
13 relate to Menendez's agreement with Daibes to obstruct Daibes's
14 federal prosecution and also to Menendez's own attempt to
15 obstruct the Southern District of New York's investigation into
16 this conduct. These include charges against Menendez and
17 Daibes.

18 So it's a lot of charges. It's a lot of evidence,
19 because this was a years-long scheme. It had a lot of
20 overlapping players and parts. And I'm going to go charge by
21 charge and break it down for you so you can see how each part
22 is proven beyond a reasonable doubt.

23 First, we're going to add in some blank lines to this
24 chart for each of the counts so that we can keep track of the
25 counts that we've been through as we go.

O78Wmen4

Summation - Mr. Monteleoni

1 The first pair of counts that I want to talk to you
2 about is the substantive bribery charges, Counts Five and Six,
3 related to Egypt. Count Five relates to Menendez receiving
4 bribes from Hana and Daibes, and Count Six relates to Hana and
5 Daibes offering and giving bribes to him. So since these two
6 bribery offenses -- they're basically sort of different sides
7 of the same coin -- I'm going to talk about them together, and
8 I'm going to spend some of the most time on these two counts
9 because, in a way, they're the building block of most of the
10 rest of the other counts.

11 The first element of both counts is that Menendez was
12 a public official. This one is undisputed. No dispute that
13 Menendez was a member of Congress, and I expect that Judge
14 Stein will instruct you that members of Congress are public
15 officials. So we're done with element one. They're not all
16 going to be quite this fast.

17 All right. Second is a thing of value. Now, here, I
18 expect the judge will instruct you that for Count Five,
19 Menendez must have directly or indirectly demanded, sought,
20 received, accepted or agreed to receive something of value or
21 else for another person or entity at his direction or for his
22 indirect benefit to receive something of value. I'm just going
23 to use receive and accepted as a shorthand for all those verbs
24 here.

25 And then similarly, for Count Six, for Hana and

O78Wmen4

Summation - Mr. Monteleoni

1 Daibes, they must have offered, promised or given money or
2 something else of value either to a public official or for the
3 benefit of a public official. I'm going to refer to that as
4 offering or giving. So it's important to note here that for
5 both of those counts the thing doesn't have to go to Menendez
6 directly. It's enough if a thing of value is offered or given
7 to or received or accepted indirectly. So that is by someone
8 else that Menendez wants it given to. And here, as you know,
9 for a lot of those things of value that other person was
10 Nadine, his wife.

11 Now, here, there is some dispute.

12 First, there's no real dispute that Menendez accepted
13 things like meals from Hana, like you see in the guest check on
14 the left of the screen or transportation from Daibes, which you
15 see Daibes offering in the center image, and then you see the
16 cell site records showing that that transportation was given
17 over on the right. There's no dispute that Menendez got these
18 things, that Hana and Daibes provided these things. That
19 actually is enough just to find this element. I expect Judge
20 Stein will instruct you that a thing of value includes things
21 like intangibles, and you know, that they just have to be
22 something that the giver or recipient considers to be worth
23 something. Doesn't have to be a lot, just something. But
24 obviously, these minor things are only a tiny piece of the
25 things of value that Menendez received and that Hana and Daibes

O78Wmen4

Summation - Mr. Monteleoni

1 provided.

2 So let's look at the ways that the evidence proves
3 that Menendez received and accepted things of value and that
4 Daibes and Hana gave them to him, directly and indirectly,
5 through Nadine. We're going to be coming back, by the way, to
6 the implications of the giving of some of these things of value
7 later, but for now let's just focus on how you know that
8 Menendez, in fact, received and accepted them, either
9 personally or indirectly through Nadine.

10 First, there was the sham job. Right from the
11 beginning of the scheme, Hana offered payment to Nadine in the
12 form of a job, and Nadine made sure Menendez knew it, like she
13 made sure that he knew a lot of things you're going to see
14 throughout the scheme. So here, as far back as April of 2018,
15 very early on in the scheme, she told Hana that she was talking
16 to Menendez and that she was going to ask him about the two
17 deals. So right from the beginning there's a discussion of
18 some sorts of things that are going to result in her getting
19 paid in some way.

20 Now, what you're looking at here, you may recognize,
21 is just one line from one of the government's summary charts,
22 which you may recall were featured at some length during this
23 trial. We're not going to go through all the evidence with you
24 today, because you sat through the trial, but if you want to go
25 through any of it as you deliberate, you can just write down

O78Wmen4

Summation - Mr. Monteleoni

1 the exhibit numbers and it's going to be there for when you
2 deliberate if you want to look at it again.

3 This one is from Government Exhibit 1302. That's the
4 chronological summary chart that's been focused mainly on this
5 Egypt conduct that we went over. All right. So that was
6 April.

7 Now, May 2018, here, Nadine is sending an email to
8 Menendez telling Menendez that Will and the general, this
9 general, got her clearance for a project. Is this a volunteer
10 project? Obviously not. This is something that's going to get
11 her paid. We're going to come back to this message in a bit,
12 but right now just note how early this is that she's telling
13 him about things that are going to get her paid.

14 So menendez also knew that Hana might actually get her
15 some sort of job with the Egyptian government. This is a
16 message that he sends in January 2019, when she's on her way,
17 you saw from the summary chart, with Hana to talk to an
18 Egyptian embassy official about work doing some import-export
19 to Egypt. So this is all right from the beginning. But you
20 really find out about just what Hana had been promising her a
21 few months later when he fails to deliver.

22 So here, in the spring of 2019, Nadine is very
23 explicit that Hana promised her a job and a job paying about
24 \$10,000 a month. Here, in this version, it's 2,500 every week,
25 which is a bit more than \$10,000 a month, but it's close. And

O78Wmen4

Summation - Mr. Monteleoni

1 she's saying she kept every promise to Will. That's not
2 because she's done work for the halal company. It's not in
3 operation by this point. No. The promises that she kept to
4 Will are because she got Menendez to help Egypt and to promise
5 help to Egypt, as you've seen and as we'll go over. So Hana
6 obviously knew about these promises of payment to Nadine. And
7 here, Nadine is telling Hana's lawyer, Howard Dorian, and
8 Howard Dorian is desperately trying to keep her happy in the
9 messages around this time period. These promises are not just
10 to Nadine. Hana's also telling his Egyptian contacts about
11 these promises that he's making to pay her.

12 Here, he is sending his Egyptian contact, HH HH, a
13 salary list, and this is a list of salaries for this new halal
14 company that is just getting set up. And in the salary list,
15 he is telling his Egyptian contact that Nadine is getting
16 \$120,000. That obviously is the same as the \$10,000 a month
17 that she wants. And it also makes her the second highest paid
18 employee in the company. So, of course, Hana knows that he's
19 offering her something of value -- \$10,000 a month. But did
20 Menendez know about this job?

21 Of course he did. Nadine, here, gets inside
22 information that Hana is going to have a halal certification
23 monopoly handed to him. This is April 8, 2019, before the U.S.
24 Department of Agriculture got notified that there was going to
25 be a monopoly. Nadine learns from Hana, and right away she

O78Wmen4

Summation - Mr. Monteleoni

1 passes it on to Menendez. Menendez knew before Bret Tate. She
2 says "seems like halal went through." She doesn't explain more
3 about what that means because she doesn't need to. Menendez
4 already knows. Says "it might be a fantastic 2019 all the way
5 around" -- fantastic for Hana because he's going to start
6 raking in huge monopoly profits, and that fantastic 2019 is
7 going to make its way all the way around to Nadine and
8 Menendez, because they're going to get paid from those profits.

9 So it's not just that Menendez hears this directly
10 texted to him, he also takes actions to get Nadine paid. Gets
11 a lawyer to set up her company. He's getting her the lawyer to
12 do that. He gives her advice on looking online for a
13 consulting contract to paper it when she can't find a contract
14 for her consulting company at Staples.

15 He knows that a check is coming in, either from Hana
16 or from Daibes. You see here, June 13, 2019, this shows you
17 that by this point Daibes, who's been financially backing
18 Hana's business, Daibes is part of this bribe scheme too. Even
19 as early as June 13, 2019, he's so much a part of it that in
20 this message Nadine is actually worried about his vacation
21 schedule when she's trying to figure out when she's going to
22 get paid. It's not just talk. It's not just talk for Menendez
23 or for Daibes.

24 The first \$10,000 check for the sham job, August 2019,
25 Daibes personally puts into Menendez's hand: "Nadine, I

O78Wmen4

Summation - Mr. Monteleoni

1 personally gave Bob a check for September." And you know
2 Daibes is right when he says to Nadine he personally gave Bob a
3 check for September, because Nadine, who's been asking for
4 money and saying that she has a list of demands for how much
5 she's owed, she then goes and checks. She sends Daibes back
6 this handwritten rundown of what she believes that she's owed.
7 And this rundown is \$10,000 less than what she had originally
8 asked Fred Daibes for, because after Fred Daibes clarified that
9 he had personally gave Bob a check for September, she thanks
10 him for clarifying. She says, "thank you very much for
11 clarifying," subtracts that \$10,000 check. \$10,000 check from
12 Hana handed by Daibes to Menendez.

13 That right there is the thing of value. Element done.
14 And there's no reasonable dispute that Menendez knew about this
15 payment. He held it in his own hand. And by the way, that May
16 1 date that she's sort of listing as the first of the month
17 when she's owed payment, if you remember, May 1 is the date
18 that this halal company monopoly started. So right from the
19 beginning she's talking about getting money for this company.
20 But we could be done with this element if that was the only
21 thing of value, but there is so much more.

22 Another \$10,000 check is coming in late September.
23 And again, Daibes, Hana and Menendez, they all know about it.
24 Menendez knows about it because, as you see here, Nadine
25 complains to him about the check not coming fast enough. She

O78Wmen4

Summation - Mr. Monteleoni

1 leaves him a voice mail, saying I really want my check. This
2 is also the check that Menendez tells Nadine not to put
3 anything in writing about, because he knows what they are doing
4 is wrong, because he does not want to get caught. He says no,
5 you should not text or email.

6 We'll come back to that. But Daibes knows about this
7 check too because Nadine calls him about it. She leaves him a
8 long voice mail on September 27 of 2019, and then after that
9 call, Daibes gets Hana to write it because the check is issued,
10 as you see here, the next day, another \$10,000 check that
11 Daibes and Hana provide to Nadine, with Menendez's approval,
12 another proof of a thing of value element. But there's more.

13 A third check. Daibes again offers to give this one
14 right to Menendez. I have the envelope for Nadine. Menendez
15 tries to distance himself from it. You see here he's saying
16 well, actually, just mail it to her. But obviously the point
17 isn't whether he gets Daibes to send it by mail rather than by
18 accepting another hand delivery. The point is Menendez knows
19 that hana writes the check, Daibes is involved in the
20 delivering of it, and Nadine is receiving it with Menendez's
21 approval, another thing of value.

22 But it's not just the checks to Nadine's sham
23 consulting company. Hana also pays to bring Nadine's mortgage
24 current. He doesn't want to, but he does it. Does Menendez
25 know that? Of course he does.

O78Wmen4

Summation - Mr. Monteleoni

1 Now, at first, she keeps it from him, and so you see
2 here, this is what it looks like when Menendez doesn't know
3 something. This is on the few occasions when something is
4 being kept from Menendez, he complains, he asks, he brings it
5 up. As you see here, he's complaining that she's not telling
6 him what's going on here. Remember, like Michael Soliman told
7 you, he is detail-oriented. You don't get to be the chairman
8 of Senate Foreign Relations Committee by being clueless.

9 But we also see from this it's actually out of the
10 ordinary. This particular thing, her delinquency on the
11 mortgage she keeps from him for a while. But as you see, again
12 and again and again, she's looping him in on big things and on
13 little things. So, about the mortgage, she keeps it from him
14 for a while, but then she realizes she's going to have to tell
15 Menendez when they get back from a vacation on July 5. She
16 leaves this long message for Daibes and says that she's going
17 to tell Bob on Friday, that's July 5, after they get back.

18 Well, that's what she says, but does she do it? She
19 sure does. A few days after getting back, she has told Bob all
20 about it so that she could just mention in this text message to
21 Bob. Just in the course of a message about how she's having a
22 productive day, she says that she double-checked about the
23 payments. She doesn't have to explain what the payments are
24 for, and Menendez doesn't ask her what she's talking about
25 because she has already explained it. And then Menendez stays

O78Wmen4

Summation - Mr. Monteleoni

1 on top of this.

2 Menendez calls her in July and tells her to call
3 Daibes. You see the call from Menendez to Nadine there, and
4 then a few minutes later, the call from Nadine to Daibes. And
5 what she says here is -- she's actually a little cagey about
6 who called. She says, I just got a phone call asking me to
7 give you a call.

8 We'll come back to that sort of cageyness there, but
9 Daibes clearly gets the message. He immediately calls Nadine,
10 who immediately reports back to Menendez. You can see this is
11 just minutes later. Daibes is calling her back, and she's
12 immediately keeping Menendez posted. And then Menendez keeps
13 following up. And so when nothing has been done, he has Nadine
14 call Daibes back to get the payment made: Bob called me today
15 to find out if everything's been taken care of. Bob insisted
16 on me letting you know.

17 So, obviously, Nadine benefits from claiming that
18 Menendez has been following up about it, but that's what the
19 records show. She was keeping him in the loop every step of
20 the way. And Daibes is an old friend of Menendez. She's
21 telling Daibes that Menendez knows about this payment. And
22 she's telling Daibes that Menendez has been following up about
23 this payment.

24 If that wasn't true, if Daibes thought that Menendez
25 knew about this and Menendez didn't actually know, how could

O78Wmen4

Summation - Mr. Monteleoni

1 she stop Menendez from finding out about it the next time he
2 has dinner with Fred Daibes or has a phone call with him or
3 texts with him? She can't. She didn't. Menendez knew all the
4 along. Hana and Daibes's bribe payments were secret, but they
5 weren't secret from Menendez. Another thing of value from
6 Hana, with Daibes's help, with Menendez's approval. Another
7 way that this element is proven. But there's more.

8 Hana sends them an elliptical exercise machine. It's
9 worth thousands. It's for Bob. Your elliptical we put
10 together at 9 a.m. Monday morning, and it's there in their
11 bedroom, while they're married. Obviously, Hana sent it and
12 Menendez received it.

13 Then there's the gold. Hana gave Nadine a total of
14 about \$12,000 in one-ounce Asahi gold bars. These are bars
15 that he bought in June 2021, months after they were married.
16 So again, he knew that they were both going to benefit from
17 them. And Daibes -- Daibes gives Menendez one of the kilo gold
18 bars when Menendez and Nadine Menendez come back from a trip to
19 Egypt and Qatar, on October 18, 2021. They land on October 17.
20 Daibes stops by with doughnuts the next day. And right after
21 Daibes has left, Menendez googles the price of a kilo of gold
22 for the first time. This wasn't just curiosity. Menendez
23 never googled the price of gold at all before 2018.

24 And here, in 2019, this might be just curiosity.
25 Here, he's just googling for the price of gold without a

O78Wmen4

Summation - Mr. Monteleoni

1 quantity, just a commodity, spot price of gold. But here, this
2 is just when Fred Daibes happened to stop by with doughnuts.
3 This is the first time Menendez's search history reflects a
4 search for a kilo of gold. A few things on this. This is
5 Menendez doing the searching. One minute before he was
6 searching for how much is one kilo of gold he was sending out a
7 letter of recommendation. So the things that you heard the
8 defense sort of suggesting about trying to blame his wife for
9 his Google searches and the gold is just plain wrong.

10 Now, let me be clear. The defense has absolutely no
11 burden in this case. The burden is on us at all times, and we
12 embrace it. Defense counsel does not have to ask any questions
13 of any witnesses. They do not have to make any arguments, but
14 when they do, like they did here, you can and you should
15 scrutinize them and ask if they're consistent with the evidence
16 that you've seen and heard. When you do, you find that the
17 idea that Menendez's wife is to blame for the gold does not
18 make sense and does not square with the evidence. This is him
19 searching, not her.

20 And when is he searching for the price of a kilo of
21 gold for the first time in his life? Right after Fred Daibes
22 stops by. You know that from the cell site records, like the
23 records that you see in the bottom corner of the slide. You
24 also know that from the text about how he brought doughnuts too
25 when he came.

O78Wmen4

Summation - Mr. Monteleoni

1 By the way, the point of the doughnut text isn't that
2 doughnuts is code for gold. It's that Daibes actually came by
3 in person, bringing doughnuts with the gold. So menendez is
4 searching for the price of a kilo of gold right after Fred
5 Daibes comes by. And what did the FBI find in Menendez's house
6 a few months later, in June? Two kilos of gold. And what did
7 Nadine take pictures of? Just before selling two kilos of gold
8 to Vasken Khoroizian, which you heard about, she takes a picture
9 of two more kilos of gold.

10 What do all of these four kilos of gold have in
11 common? They had serial numbers showing that they belonged to
12 Daibes, the man who stopped by just when Menendez googled the
13 price of a kilo of gold for the first time in his life.

14 So all of this talk about Nadine having family gold is
15 a distraction. This case doesn't have to do with jewelry. It
16 doesn't have to do with gold coins. It has to do with
17 something very specific, which is kilo bars of gold. There's
18 actually no evidence that Nadine ever had kilo bars of gold
19 from her family. Even that handwritten family inventory that
20 you saw just said that the gold bars added up to three kilos,
21 but it didn't say that they're actually one-kilogram bars. And
22 even if Nadine's sister Katia didn't remember if she ever saw
23 Nadine with any kilo gold bars, but even if Nadine did have any
24 kilo bars from her family around the time when she was in
25 college in the 1980s, she obviously didn't have them in 2021,

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Summation - Mr. Monteleoni

1 after she had been struggling to pay her bills and almost lost
2 her house.

3 And the only kilo bars which have serial numbers that
4 are in evidence, the only ones have serial numbers matching
5 Daibes's gold inventory. And if Menendez was googling Nadine's
6 family gold, why did he do it for the first time in his life
7 when Daibes, who was, in fact, the source of the kilos of gold
8 that were found in Menendez's house and found pictured on
9 Menendez's wife's phone when he stopped by? And why did he do
10 it again, here, after meeting up with Daibes in 2022, right
11 after a dinner? He's doing another kilo of gold search. Again
12 and again, Menendez is googling the price of a kilo of gold
13 after meeting in person with Daibes, and Daibes is the actual
14 source of the kilo bars of gold that are found in Menendez's
15 house and found pictured on his wife's phone.

16 It's not a coincidence. It's a bribe. It's a thing
17 of value. It's another way that you know this element is
18 proven.

19 We'll talk more about the gold when we come to some of
20 the later counts, but right there, you know that Menendez is
21 getting yet another thing of value. That's not even all the
22 things of value. Hana sent over things like an air purifier.
23 Early in the scheme, Hana promised that his business associate,
24 Nader Moussa, would do some carpeting for Nadine. That fell
25 through, but Hana's lawyer, Howard Dorian -- you may remember

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Summation - Mr. Monteleoni

1 him. He's the one who asked Bret Tate, the U.S.D.A. official,
2 for what halal certification was right before Hana's company
3 was about to get the monopoly on all halal certification. This
4 is Howard Dorian. He sent Moussa over to do some household
5 tasks so that Nadine and Menendez wouldn't cancel their
6 meetings with the Egyptian officials. And some of the cash in
7 the house, including what we see here in Menendez's boot, that
8 was in envelopes with Moussa's fingerprints on them or some
9 with fingerprints of Gus Lita, one of Hana's employees. So
10 more things of value from Hana to Menendez. So we're done with
11 the thing of value element. You only need one thing of value
12 for this element, but you have one after another after another.

13 Now on to the third and the fourth elements of these
14 bribery counts, because the same evidence proves the third and
15 the fourth element. I'm going to talk about them together.

16 The third is whether the thing of value is given or
17 received in exchange for official action, what the law calls a
18 *quid pro quo*, and the fourth is whether the defendants had
19 corrupt intent.

20 Corrupt intent I expect the judge will instruct you is
21 conscious wrongdoing. It's a bad state of mind. I expect the
22 judge will instruct you the defendant doesn't have to be aware
23 of the specific law he's violating. He can have corrupt intent
24 even if he has both an unlawful intent to seek a bribe but also
25 some other noncriminal intent in part. And for the *quid pro*

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Summation - Mr. Monteleoni

1 *quo*, I expect that Judge Stein will instruct you that what
2 matters is whether a thing of value is offered, given or
3 received in exchange for a promise to take what is known as
4 official action.

5 To be clear, the public official doesn't have to take
6 any action at all. The promise alone is enough. And you know
7 that from your common sense. If a politician is promising to
8 abuse his power for money, that right there is corruption. And
9 if what he's promising instead is actually good, if he's
10 promising to do something good in exchange for money, then he
11 shouldn't be demanding money for it either. The promise itself
12 is the crime. But the promise does have to involve official
13 action, which the judge will instruct you on. And I expect the
14 judge will instruct you that could either be action Menendez
15 takes with his own powers or an attempt by Menendez to advise
16 or pressure another public official to take official action.

17 So for these counts, if Menendez promised to approve
18 military aid to Egypt, like a foreign military sale or a grant
19 of foreign military financing money, that's a promise of
20 official action. Or if Menendez promised or attempted to
21 pressure or advise the U.S.D.A. to stand down on their efforts
22 to stop the monopoly, to change the official position of the
23 United States on a matter related to U.S. foreign policy, well,
24 that's a promise of official action, or that's an attempt to
25 take official action.

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Summation - Mr. Monteleoni

1 Now, obviously, on this point, I expect Judge Stein to
2 instruct you that just having a meeting or picking up a phone,
3 having a meeting or a phone call without more, that's not
4 official action. But when the official makes a promise of
5 official action at a meeting or uses a phone call to advise or
6 pressure another official to take action, well, that is
7 official action. Satisfies the *quid pro quo* elements.

8 So these two elements regarding a corrupt *quid pro*
9 *quo*, those are the ones we're going to spend the most time on,
10 because they're really at the heart of the dispute between the
11 parties here. The question for you is when Menendez and Nadine
12 were receiving and accepting these things of value from Daibes
13 and Hana, did Menendez have, or did he convey to Hana and
14 Daibes that he had, corrupt intent to be influenced in the
15 performance of an official act?

16 (Continued on next page)

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Summation - Mr. Monteleoni

1 MR. MONTELEONI: On the flip side, when they were
2 offering and giving things of value to Menendez and Nadine, did
3 Hana and Daibes have the corrupt intent to influence an
4 official act? You know they did. Your common sense tells you
5 that they did. And the overwhelming evidence at trial has
6 proven that they did beyond a reasonable doubt.

7 Let's go through six different reasons why you know
8 that these elements are satisfied, and Menendez, Hana, and
9 Daibes are guilty.

10 How do we know they had corrupt intent and engaged in
11 a quid pro quo? The first reason is the timeline. You've
12 heard the saying "actions speak louder than words." Watch the
13 defendants' actions. Again and again, when he knew that there
14 was money on the line, for him and Nadine, Menendez sprung into
15 action to take or promise official action. And Hana and Daibes
16 sprung into action to pay him for it.

17 Let's start with the very early stages. May 28, 2018.
18 Nadine and Hana by this point have already arranged a meeting
19 with Menendez and General Shawky, the Egyptian defense attache,
20 two months previously. And a few weeks ago, Menendez has given
21 Egypt through Hana sensitive information about the personnel at
22 the U.S. embassy. By this point, Menendez has also given Hana
23 information on holds that another U.S. senator had placed on
24 aid to Egypt based on human rights concerns.

25 But now, in this message here, Nadine has a new

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Summation - Mr. Monteleoni

1 request. She wants Menendez to polish up a response by Egypt
2 to those very same human rights concerns. So, what does she do
3 to motivate him? She says she's going to get paid. The
4 General and Will have given her clearance for a project. What
5 type of project do you need clearance for? You don't need
6 clearance for a volunteer project. You need clearance for
7 something that will get you paid.

8 So May 28, 2018, 4:26 p.m., what does Menendez do when
9 he gets this? 8:34 p.m. that day, he writes the Egyptian
10 government's response. He is a U.S. senator. One of his
11 colleagues said let's not send so much aid to Egypt because of
12 their human rights record. And for years Senator Menendez had
13 a reputation as a critic of Egypt. All of a sudden, when he
14 hears Nadine could get paid, within hours, Menendez writes up a
15 response from Egypt based on some talking points that Hana had
16 sent through Nadine.

17 He writes up this response saying don't worry about
18 these human rights concerns. Give us -- that means give us,
19 Egypt -- our money. We're going to come back to this later in
20 the quid pro quo, and we'll come back to this when we talk
21 about the charges that Menendez was acting as an agent of
22 Egypt.

23 Right now consider just the way this timing shows a
24 corrupt quid pro quo. Is this letter itself an official act?
25 No. You know what it is? It is a promise of one. Remember,

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Summation - Mr. Monteleoni

1 this funding is going to come before him as the ranking member
2 of the SFRC. These human rights concerns will come before him,
3 too. Here, what he's saying by writing this letter is I'm not
4 going to give you too hard a time on these human rights
5 concerns because, look, I'm writing your rebuttal to them. He
6 does it just like that.

7 A few weeks later his promises of official action get
8 much more specific. So, Hana and Nadine set up a meeting on
9 July 25, 2018, between Menendez and General Shawky, that Egypt
10 defense attache, the same Egyptian general they'd arranged the
11 meetings with before. This meeting was part of a delegation
12 that was making the rounds to a lot of different people in
13 Washington asking for military aid. But the dinner afterward
14 was special. So first, Hana and Menendez arranged the July
15 dinner a few weeks before, in June. What you see here is this
16 June dinner that they're having at Mr. Chow, a Chinese
17 restaurant here in Midtown Manhattan. And while they're here
18 in Midtown at Mr. Chow in June, while he's there with Menendez,
19 Hana texts the date and time for this July meeting and for the
20 July dinner to Shawky. He did it while he was out at Mr. Chow
21 setting the time and date for that meeting.

22 So in July, then, after the meeting, when the time
23 came for the dinner, this is a dinner that General Shawky was
24 hosting, what you see here is General Shawky is expressing to
25 Wael Hana how he is really stressed out and worried he

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Summation - Mr. Monteleoni

1 committed a gaff by not seating Menendez next to Nadine at the
2 dinner. But it turns out, Shawky didn't have to worry.
3 Because the next day, Menendez texts Nadine to tell Hana he's
4 going to approve Egypt's tank ammunition. Nadine takes a
5 screenshot. Screenshot of another promise of an official act.
6 Again, after Menendez had heard back in May that Nadine was
7 going to get paid. Going to work on that project for the
8 general and Hana.

9 But then when we get to the spring of 2019, the timing
10 is even clearer. In March 2019, Nadine hasn't been paid yet.
11 And she makes clear she's been getting promises of a job by
12 Hana for a year. All the way back to that first meeting she
13 set up for Hana and the Egyptian defense attache with Menendez.
14 She says it's been a year of broken promises from March 2019
15 That takes you back to March 2018. And that is the month when
16 there was that first meeting that General Shawky had at
17 Menendez's office set up by Hana and Nadine.

18 So, she's complaining about this to Howard Dorian,
19 Hana's lawyer, but she doesn't just complain about it to him.
20 She's also obviously talking to Menendez about it. She's
21 leaving messages the next day, talking about how she refuses to
22 set up dinners for Hana.

23 In this voice messages you'll see she doesn't explain
24 why in this message she's refusing to set up a dinner for Hana.
25 She doesn't have to. Menendez knows about Hana's promises to

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Summation - Mr. Monteleoni

1 pay her already. So this is one of a huge number of calls and
2 texts that you have seen about Nadine keeping Menendez updated.
3 She is not keeping him in the dark. She's letting him know
4 something as basic as the fact she is not planning a dinner.
5 That's the level of detail in her updates. You can tell from
6 the context she's told him a lot more too.

7 In April, Nadine still hasn't gotten paid by Hana, but
8 she does tell Menendez she's going to. Seems like halal went
9 through. Now, remember, Menendez has worked on Nadine's
10 résumé. He understands she does not have consulting
11 experience. She doesn't have a consulting track record. He
12 knows that this is not a real job for the company. That it is
13 a way to collect payments in exchange for Menendez's promises.

14 A few weeks later, Menendez takes another meeting with
15 Ahmed Helmy. This is one of the Egyptian officials that Hana
16 has been setting him up with. Someone you can see from the
17 text Hana has regularly been taking orders from this Helmy.

18 Hana is saying the quiet part loud. He's talking
19 about the halal company, the company that's going to pay the
20 Nadine in the meeting. It appears from what Nadine is telling
21 Menendez that Helmy is actually angry at Hana for talking about
22 the halal in the meeting, while Menendez and Helmy want to talk
23 about issues related to military aid. They want to talk about
24 things like the case of April Corley. April Corley is the
25 American who is injured in an Egyptian air strike.

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Summation - Mr. Monteleoni

1 And here's another thing about this meeting with Helmy
2 and Hana and Nadine. Not on the calendar that Menendez's staff
3 keeps for him. This is not an ordinary meeting. This is a
4 meeting that Menendez wants kept off the books because it's
5 another meeting in which he's putting his power up for sale.
6 Maybe it was smart for him to keep it off the calendar, because
7 the halal business came up. But you know he doesn't want Sarah
8 Arkin, who is pressing on him to be more vocal about human
9 rights, at this meeting.

10 What do they do after the meeting? Well, that
11 evening, the evening of this meeting, is when they go out to
12 Morton's. That's when the FBI catches Nadine offering what
13 else can the love of my life do for you. Turns out, we find
14 out what in the next two days.

15 Hana gets mad the day after that Morton's steakhouse
16 dinner. Mad about the USDA criticizing his monopoly. That
17 criticism is getting press in Egypt, and he sends an article
18 reporting on the criticism and a translation to Nadine. Nadine
19 sends it to Menendez, and within minutes, Menendez has his
20 staff send it to Undersecretary McKinney. Not just Menendez's
21 staff. The article was following up on a call Menendez
22 personally made to Ted McKinney, the undersecretary of
23 Agriculture. And not just any call.

24 Before we talk about the call itself, I want to pause
25 here for a moment. As you've seen throughout this trial, the

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Summation - Mr. Monteleoni

1 Egypt part of the scheme involved many players, multiple
2 bribes, different kinds of actions Menendez promised, all
3 spanning about 4 years. But this one incident, the McKinney
4 call, and the bribes surrounding it, is all you need to convict
5 on the Egypt bribery counts. If you consider what Menendez
6 said on the call, in the context of what happened in the few
7 days before and after the call, it includes everything you need
8 to find him guilty on Counts Five and Six, just this one brief
9 chapter. Thing of value, in exchange for a promise of official
10 action, and Menendez following through on that promise. That's
11 a corrupt quid pro quo.

12 So if you find that Menendez in fact made that call in
13 exchange for Hana's promises of payments to Nadine, that's all
14 you need to convict Menendez and Hana of Counts Five and Six,
15 and as we'll see, it becomes enough to convict Daibes as well a
16 few months later when Daibes actually delivers one of those
17 bribes to Menendez.

18 Of course, you have a ton more because there were
19 plenty of other bribes and promises of action related to Egypt,
20 which we'll talk about. But the McKinney piece alone makes
21 each defendant guilty on these counts.

22 So turn back to the timeline of events surrounding
23 this McKinney call. So we just talked about how a few weeks
24 before Menendez got texts from Nadine she's going to get paid
25 from the halal monopoly, might be a fantastic 2019 all around,

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Summation - Mr. Monteleoni

1 and then we've also looked at Menendez's incredibly swift
2 actions to make the call, right after meeting with Hana and
3 Ahmed Helmy, right after that steakhouse dinner where Nadine
4 offers Menendez's help, and then minutes after getting this
5 article texted to him.

6 So what happened on that call? You already know a lot
7 just from the timeline of hard evidence. This is a call that
8 McKinney needs to reassure his staff about. A call that makes
9 the undersecretary of agriculture for trade and foreign
10 agricultural affairs feel that he needs to tell the staff at
11 the embassy that he has their back.

12 So just from the documents, just from the timeline,
13 you can tell what's happening. But you don't just have to look
14 at the documents. McKinney testified, and he told you what
15 happened on that call, he told you. And what happened on that
16 call was exactly what Hana wanted.

17 Menendez demanded that McKinney stop interfering, stop
18 interfering. Those words were stuck in McKinney's memory. Cut
19 out his efforts to make Egypt change its mind about Hana's
20 monopoly. Reverse the USDA's policy position and just let Hana
21 have his monopoly.

22 It was a shocking call that you could tell clearly
23 left an impression on McKinney. And that's because Menendez
24 was being as forceful as he could to help Hana keep that
25 monopoly. Using his power as a senator to try to pressure

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Summation - Mr. Monteleoni

1 McKinney to change the USDA's position.

2 Remember, doesn't matter whether the pressure on
3 McKinney actually worked. What matters is Menendez tried to
4 pressure him.

5 So the timeline leading up to that call shows that
6 when Menendez knows there is money in it for Nadine, he swings
7 into action. From zero to making a call that alarms the
8 undersecretary of agriculture enough that he has to tell his
9 professional staff that he has their back.

10 Menendez gets the request from Hana. He gets right on
11 it like it's his job, because it is. Because he's getting paid
12 for it through Nadine.

13 You can tell that with what happens after with the
14 sham job. The follow through after the job makes the corrupt
15 quid pro quo undeniably clear. Not even a week after
16 Menendez's call to McKinney that you see Hana here telling his
17 Egyptian contact Nadine is going to be getting \$120,000 a year.
18 Not even a week after that official act attempted that there is
19 this thing of value being promised and set up. You can stop
20 right here in the timeline and that's all you need to convict
21 Menendez and Hana on these counts. This text tells you Hana is
22 making good on these promises of payment in exchange for
23 Menendez's call to McKinney just days earlier. You have even
24 more.

25 Week after that is when Menendez set up Nadine with

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Summation - Mr. Monteleoni

1 the lawyer to form her consulting company. The week after
2 that, later in June is when Nadine's asking Menendez if the
3 check coming from Daibes or from Hana. Then by mid July Nadine
4 has told Menendez about the mortgage company payment, and
5 Menendez is urging her to follow up with Daibes to get it paid.
6 Bob insisted on letting me know. On me letting you know,
7 rather.

8 But he doesn't stop there. At the end of July,
9 Menendez is telling Nadine to tell Fred Daibes her company name
10 so that Daibes can write the check. And then one month later,
11 Fred Daibes is personally putting a \$10,000 check into
12 Menendez's hand. And at that point, when Daibes is delivering
13 one of the bribe payments himself, is where you get all you
14 need to convict Daibes on these counts, too. Just this
15 sequence.

16 From Nadine texting seems like halal went through in
17 April, to Menendez calling McKinney to protect Hana's halal
18 monopoly in May, Hana beginning to put Nadine on the payroll
19 days later, Menendez setting up a sham consulting company for
20 Nadine in June, pressing Daibes to get Hana to pay the mortgage
21 from that company in July, and getting a \$10,000 check from
22 Hana put into his hand by Daibes in late August. That sequence
23 gives you all you need to prove Counts Five and Six against all
24 the defendants. You can begin and end with this sequence
25 surrounding the McKinney call to convict all the defendants on

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Summation - Mr. Monteleoni

1 the Egypt bribery counts. But of course there is so much more.

2 The timeline alone shows you this whole time Menendez
3 is still promising more help to Egypt. Right after calling
4 McKinney, he is fielding a request which comes from Ahmed Helmy
5 to Hana, passed from Hana to Nadine, to him. To help out in
6 Egypt's negotiations with April Corley, who is injured in an
7 Egyptian air strike. Ahmed Helmy is saying our decision is we
8 already gave our final offer. 2 million and not a single
9 dollar more. They don't want to offer more money to this
10 injured plaintiff, and that is the case that Helmy sends Hana
11 images of a document from, Hana sends them to Nadine, and
12 Nadine sends them to Menendez.

13 Doesn't stop there. In September, Helmy has a
14 question for Menendez. So he asks Hana is this true? Hana
15 tries to get through to Nadine. Then he connects with Daibes
16 who calls Menendez. Daibes reports back to Hana who gets the
17 message back to Helmy. All in less than 20 minutes. What was
18 Helmy asking about? First of all, doesn't matter. That kind
19 of immediate access to a U.S. senator already shows how serious
20 Menendez was about his promises to be helpful to Egypt, even if
21 in this case what Helmy was asking about was something minor.
22 But second of all, you know from the evidence and your common
23 sense what Helmy was asking about. He was asking about the
24 things that Egypt always cared about.

25 And look, couple days later, Helmy is letting Hana

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Summation - Mr. Monteleoni

1 know they're getting promises from Menendez's staff about,
2 quote, having things go well in what relates to Egypt. They're
3 getting the same kinds of promises of assistance to Egypt that
4 Menendez has been giving all along.

5 A few days after that, Menendez is back at it, sending
6 a bill about things in the region through Daibes to Hana to
7 Helmy. Why does Menendez do it? For the money to Nadine.

8 All of that, what we've just been through, is days,
9 days before Menendez is again telling Nadine how to collect her
10 money. In particular, is telling her she should not text or
11 e-mail Fred Daibes, a phrase we'll come back to in a moment.

12 Quid pro quo. This for that. Promises made to Egypt
13 and protection of the monopoly Egypt gave Hana, for checks from
14 that very monopoly right into Menendez's hand.

15 The timeline tells you what happened. When Menendez
16 hears Nadine is going to get paid, he springs into action again
17 and again. The exhibits in this chart are everything you need
18 to prove the corrupt quid pro quo. You've heard the evidence,
19 but if you want to see it again, you can write down the number
20 of this chart and then look at every exhibit in it that you
21 want. Government Exhibit 1302. Just based on the evidence in
22 this timeline alone, even if there were nothing more than what
23 we've just been through, we would be done with these elements.
24 But there is so much more.

25 Beyond when he acted, look at the kinds of things that

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Summation - Mr. Monteleoni

1 Menendez did or promised. Again and again, he did things or he
2 promised things that were not just ordinary. That's the second
3 way that you know these elements are met.

4 Now, to be clear, this is absolutely not necessary for
5 you to find these elements proven. In fact, I expect that
6 Judge Stein will instruct you, even if Menendez would have done
7 all these things anyway, even if all these things were in the
8 U.S.'s interest, these elements can be proven, so long as part
9 of his motivation for doing so or promising to do so or
10 attempting to do so was a corrupt quid pro quo. In fact,
11 Menendez didn't even have to do anything at all, let alone do
12 anything out of the ordinary. Even if you thought everything
13 Menendez did or promised to do was the most normal thing in the
14 world for him, the kind of thing he should be doing, should be
15 doing in the public interest, these elements are still proven
16 if there was the promise of an official act, and if he made
17 that promise, even in part, because of things of value he was
18 getting with corrupted intent.

19 You can't take a bribe for promising to perform an
20 official act, even if it's an ordinary and routine act. But
21 you know from this trial that what Menendez promised was not
22 ordinary. That's another reason you know it was a corrupt quid
23 pro quo.

24 Let's take a look. So you've seen this before.
25 Menendez is promising an official act here. The approval of a

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Summation - Mr. Monteleoni

1 sale of \$99 million in tank ammunition. Now, of course, you've
2 heard the actual sale itself was supported by the State
3 Department. Was supported by the administration. Planning on
4 approving on a sale like that is not out of the ordinary.

5 What is out of the ordinary? First of all, obviously,
6 why is he texting this to his girlfriend? Why is Nadine
7 getting involved with anything about \$99 million of tank
8 ammunition? For that matter, why is he asking her to send it
9 to Will Hana, who you heard was at that time a failed trucker.
10 Not that becoming a halal meat certifier would give him any
11 particular reason to know about \$99 million of tank ammunition,
12 but he wasn't even a halal meat certifier at this point.

13 All right. But what else was out of the ordinary
14 about this promised approval? The speed of the promise to
15 approve. Menendez is saying here's going to sign off today.
16 That's July 26, 2018. That's within the 40-day period. And
17 you know that that is unusually fast. Joshua Paul, the former
18 State Department employee, told you it is extremely uncommon
19 for a sale to Egypt to clear within that time period.

20 What you're seeing here, by the way, is a quote from
21 some of his testimony. What you see being stated here with the
22 white letters TR, those are the page numbers of the transcript
23 from his testimony. If you want to take notes on that, if you
24 want to request those transcript pages, if you'd like to see
25 them again when you deliberate, just like anything on these

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Summation - Mr. Monteleoni

1 slides.

2 So Menendez is promising not just an approval, which
3 is ordinary, he's promising a quick approval, which is anything
4 but. And Hana and Shawky, they knew this was unusual. After
5 getting the promise, here they are, you know, Shawky sending a
6 bunch of thumbs up emojis and talking about who will get the
7 credit for it. Saying the people should repay the kindness.
8 Another reason you know that this promise of an official act
9 was part of a corrupt quid pro quo.

10 But that's not even the most unusual official act or
11 promise Menendez took. Let's talk about what he did to protect
12 the monopoly that his bribes will be paid from. Not just his
13 bribes, also the monopoly, it was going to make Hana rich and
14 was going to put millions of dollars of investments into
15 Daibes' business through joint ventures, which we're going to
16 talk about. This monopoly was going to be a payday for all
17 three of them, Menendez, Hana, and Daibes.

18 So what did Menendez do to protect that payday? You
19 heard it from Undersecretary McKinney. Menendez's call was the
20 only time, the only time he had ever gotten a call from a
21 member of Congress that was advocating for a constituent at the
22 expense of the rest of the United States. You know it was
23 unusual, and you know it was an attempt to pressure McKinney.
24 Menendez didn't raise his voice, and Menendez didn't say he was
25 going to retaliate against McKinney about this. He didn't need

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Summation - Mr. Monteleoni

1 to. Menendez was the ranking member of the SFRC. He didn't
2 have primary jurisdiction over the farm bill that funded
3 McKinney's agency, but parts of that bill came before him. You
4 heard that from Sarah Arkin who worked for Menendez at the
5 SFRC. And McKinney knew that Menendez was powerful and
6 influential in Washington. He told you that. And he also told
7 you how he responded. You saw he had to reassure his staff
8 that he had their backs. And that's the only time that after
9 getting a call from a member of Congress that McKinney had to
10 reassure his staff.

11 This is not an ordinary call. It is not just McKinney
12 that says a call like this is unusual. It's Menendez. It is
13 his own website. "Our office cannot overturn or influence
14 matters involving private businesses." That's what he told the
15 world. That's what he told the people who weren't paying him.
16 But for Hana, it was totally different. For Hana, Menendez
17 sprang into action to try to do exactly that. He tried to
18 overturn or influence what the USDA was doing involving Hana's
19 private halal business. A business that just so happened to be
20 generating money that was promised to Nadine.

21 That's another reason you know there was a corrupt
22 quid pro quo. An official act to protect the monopoly of a
23 business that had promised to put some of those monopoly
24 profits right into the pocket of Menendez's girlfriend.
25 Another way you know these elements are proven.

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Summation - Mr. Monteleoni

1 That monopoly, by the way, doesn't just show you
2 Menendez's intent. It also shows you Hana's intent and shows
3 you Daibe's intent also. For Hana, it is obvious this was his
4 payday. None of his businesses had succeeded until Egypt
5 dropped this lucrative monopoly in his lap so of course he's
6 going to pay Menendez to protect it. But this monopoly will
7 pay Daibes too. Daibes signs, a few years after this monopoly
8 gets up and running, signs a multimillion dollar joint ventures
9 with Hana. Hana only has this money from the monopoly. That's
10 where the money he invests with Daibes comes from.

11 Daibes puts checks from the halal monopoly right into
12 Menendez's hand, and Daibes in turn got millions of dollars
13 from that monopoly invested into his business. That shows
14 Daibes knew all about Menendez's promises of official acts.

15 He's Menendez's friend. He's backing Hana's business.
16 He is the guy that Menendez sends Nadine to get Hana to pay up
17 the bribes from the business. And Menendez's right to send her
18 to him because Daibes does in fact help Hana pay Menendez the
19 bribes from that business. And Daibes is getting millions of
20 dollars of investments from that business. Of course he knows
21 what Menendez is doing for that business.

22 In any event, Daibes sure knows about the information
23 that Menendez is sending around about promises of official
24 acts, because he uses Daibes to pass that information along to
25 others in the scheme. Right. We just saw where Daibes

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Summation - Mr. Monteleoni

1 answered Helmy's questions of Menendez that were passed through
2 Hana really quickly. And here. Here he got a draft of a bill
3 from Menendez. He got that from Menendez, and he passed it
4 along from Hana to Helmy.

5 The evidence is clear that Daibes knew about
6 Menendez's promises of official act. So this special treatment
7 to protect a monopoly that benefits both Hana and Daibes, and
8 both Hana and Daibes used to put payments into Menendez's hand,
9 is another powerful reason you know there was a corrupt quid
10 pro quo. Again, this is all you need to convict each defendant
11 on Counts Five and Six. There is so much more still.

12 So maybe the most unusual special treatment of all,
13 the ghostwritten letter, here is Menendez using his personal
14 e-mail account to write a letter for the Egypt government
15 against the position of one of his own fellow U.S. senators.
16 It is even against his own public position and the position
17 that Sarah Arkin knows. As I've said before, it is a way of
18 promising official acts. Obviously he's not saying he is
19 joining in the objections that's writing a response to. But
20 even leaving that aside, it is obvious special treatment. Your
21 common sense tells you that.

22 The special treatment isn't just things that are
23 official acts or a promise of official acts themselves. The
24 whole pattern of giving Egypt special treatment so that they
25 know that when he does promise them official acts, he means it.

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Summation - Mr. Monteleoni

1 This ghostwritten letter didn't come out of nowhere. It is a
2 response to the facts that Menendez himself sent to Hana.

3 He was handing out a summary of the concerns that led
4 another senator to hold up aid to Egypt, and then he was
5 helping write a response to those concerns.

6 But that's not all the information that Menendez
7 provided to Egypt. Here he is, the same day, giving out
8 sensitive, non-public information about the number of Americans
9 stationed abroad and the number of foreign nationals working at
10 the U.S. embassy in Egypt.

11 You heard from Bret Tate early in this trial that this
12 information was highly sensitive because it could help foreign
13 governments identify people working for the U.S. embassy. Now,
14 eventually, that information would go stale and the number of
15 the employees at the embassy changed. So, the historical
16 information about what those numbers had been in the past, that
17 wouldn't be sensitive anymore. It could be publicly released
18 after the fact, as you saw in the trial.

19 But that's not what Menendez was doing. He was giving
20 them real-time information. That's what's at American embassy
21 present tense. You heard from Bret Tate why this information
22 was so sensitive. It could be combined with other information
23 to allow foreign governments to identify and locate people
24 working with the embassy. As Bret Tate explained, even if the
25 foreign government knows where to find some of the people

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Summation - Mr. Monteleoni

1 working with the embassy, they shouldn't get a roadmap to find
2 the rest. But that is exactly what Menendez texted out here.

3 Everyone involved knew that this was out of the
4 ordinary. "Don't ask why I'm asking." They know this
5 information is sensitive. If you look up to the middle e-mail,
6 Tiernen Miller at the State Department said she needed a reason
7 to disclose it. In order to get this information, I would have
8 to ask and someone is going to ask why.

9 But the reason, if you look at the top, is Menendez is
10 asking. That's how much responsibility he was trusted with.
11 His name was reason enough to disclose sensitive information.
12 Information that Menendez then texted out through Nadine to
13 Hana, and it went to Hana, from Hana to Ahmed Essam, one of the
14 Egyptian government officials that Hana was always texting
15 with.

16 This wasn't just a one-time thing. Hana sits down to
17 dinner with Menendez. Next thing he's texting the Egyptian
18 defense attache that the State Department has given a heads up
19 that they're lifting a ban on small arms to Egypt.

20 He keeps doing this even years later. The head of
21 Egyptian intelligence is coming to meet with U.S. senators in
22 2021. That's usual enough. But the day before the meeting,
23 what does Menendez do? He meets with them at the hotel for a
24 special meeting his staff didn't know about. And then, he
25 sends the Egyptian government an article through Nadine that

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Summation - Mr. Monteleoni

1 his own fellow U.S. senators are planning to ask about reports
2 that Egypt was involved in a human rights abuses. In this
3 case, the notorious murder of the U.S. resident Jamal Khashoggi
4 by Saudi Arabia. Why? He's doing it so that the Egyptian
5 government can prepare their answers. Wanted to give you a
6 heads up so you can prepare your answers is what Nadine says
7 when she's sending along what Menendez sent her. So the head
8 of Egyptian intelligence can better defend himself against
9 questions Menendez's own fellow U.S. senators have about
10 whether Egypt committed a human rights abuse.

11 By the way, remember those small Asahi 1-ounce bars of
12 gold from Hana, some of which found their way into Menendez's
13 house? Hana bought them the day after this meeting with the
14 senators. The special treatment was frankly obvious.
15 Menendez's SFRC staffer Sarah Arkin knew it when Menendez told
16 her he was changing approaches right during this spring 2019
17 timeframe when Hana's halal company was just in the process of
18 getting approved. Right when Hana was becoming in a position
19 that he would be able to deliver on the promised bribes.

20 And you saw it in the text messages. Menendez along
21 with Nadine and Mai Abdelmaguid tried to plan a special trip to
22 Egypt. Not a normal CODEL planned by the U.S. government.
23 This would be a trip that would be planned by Abdelmaguid.
24 When Sarah Arkin followed the normal procedure, Mai said she
25 would lose her job. She said SOS. SOS now it has to be a

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Summation - Mr. Monteleoni

1 normal CODEL. SOS because the State Department learns about
2 the trip and gets involved.

3 This wasn't just Nadine and Abdelmaguid saying this to
4 each other. Nadine forwarded this to Menendez, SOS and all.

5 So how does Menendez respond. Does he say why should
6 Abdelmaguid lose her job just because the CODEL has to be
7 planned in the ordinary way? Does he say why does the State
8 Department finding about my trip to Egypt an SOS? No. "Taken
9 care of." He knew exactly what was going on. He took care of
10 it.

11 Sarah Arkin wasn't even on these messages. She never
12 saw these messages and she still knew the way Menendez was
13 behaving about Egypt was weird. It wasn't just her. Damian
14 Murphy, Menendez's own staff director knew it. "All of this
15 Egypt stuff is very weird. I've never seen anything like it."
16 I've never seen anything like it.

17 Sarah Arkin told you this wasn't just about the CODEL.
18 It was in connection with the CODEL and beyond. And beyond.
19 Damian Murphy and Sarah Arkin knew Menendez was acting weirdly,
20 but they didn't know why.

21 After hearing and seeing the evidence at this trial,
22 you know what they didn't. The softening of his public
23 statements, the secret meetings, the sharing sensitive
24 information, secretly advising and defending Egypt, even while
25 trying to hold onto his public reputation as one of its

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Summation - Mr. Monteleoni

1 toughest critics. Menendez wasn't acting weirdly. He was
2 acting corruptly. He was acting like a bribed man, because
3 that's what he was.

4 Which bring us to the next reason you know it was a
5 corrupt quid pro quo. The bribes themselves. We've already
6 talked about this in the second element, but let's state the
7 obvious. The fact that Menendez knew Nadine was getting these
8 things of value is powerful evidence that this was a corrupt
9 quid pro quo.

10 We've been through some of the evidence that Menendez
11 knew about the things of value. What I want to focus is what
12 that means about the quid pro quo. Why are Hana and Daibes
13 giving Nadine these sham job payments? And why is Menendez
14 accepting them? Menendez knows Nadine is not a consultant. He
15 knows she's not getting paid for her consulting skills. You
16 even got confirmation of that from her sister. Nadine didn't
17 have a job, she didn't work, and IS EG's own office manager
18 confirmed she never saw Nadine do work.

19 Why is Nadine getting paid by IS EG? What does she
20 bring to the table? She brings Menendez's power and influence.
21 Menendez knows it. He's been working on her résumé. He has
22 helped her through every stage of setting up this supposed
23 consulting business. Hana knows it too. When his contact asks
24 him for job titles and descriptions, he gives other people real
25 responsibilities, but Nadine he just makes a vice president.

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Summation - Mr. Monteleoni

1 He doesn't know what she's going to do, he just knows she is
2 going to be his second highest paid employee.

3 You heard from one of Hana's employees about Nadine
4 sending a few text messages and e-mail about looking at office
5 space in India. That's obviously not what she was getting paid
6 \$30,000 for. You heard Hana asked her to look at offices, she
7 sent an e-mail about looking at a few offices, and a few weeks
8 later she got another \$10,000 checks.

9 That's not a real consulting job. That was a fig
10 leaf. Nadine wasn't getting hired to doing real work. She
11 wasn't fired either. She didn't act fired. Nobody took any
12 action to fire her. Hana just paid her the last of the
13 agreed-upon checks and she stopped pretending to do work. The
14 job was a sham, and Hana knows it.

15 Howard Dorian, Hana's lawyer, he knows it too. If we
16 don't keep Nadine happy, she'll cancel the meetings with
17 Menendez. And obviously who would have to agree in order for
18 these meetings to get canceled? Menendez himself. She doesn't
19 have the ability to reach in and cancel Menendez's own meetings
20 against his will. Howard Dorian knows Menendez is in on it.

21 Who else knows? Fred Daibes. Nadine complains to him
22 about not getting paid, and she complains that Hana wants her
23 to come into the office. This is one of the first times that
24 Nadine has ever spoken to Daibes on the phone, and she doesn't
25 have to explain any context. Daibes already knows. The idea

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Summation - Mr. Monteleoni

1 that Nadine would have to come into the office and do some work
2 for the money, that's obviously not what they agreed to. So,
3 that's why the fact that Hana is saying now in late June of
4 2019, oh, you got to be in the office eight hours a day, that
5 doesn't mean he thinks it's a real job. That means he's
6 already gotten what he wants from Nadine, he's gotten the
7 monopoly, and he's gotten Menendez to protect it. Now he
8 doesn't want to have to pay, so of course he's throwing up
9 barriers. But in the end, he ends up paying her for no real
10 work.

11 Just like the other things of value, gold bars, payout
12 on the mortgage, these checks are another reason you know it is
13 a quid pro quo.

14 The next reason is the secrecy. Menendez, Hana,
15 Daibes, and even Nadine, they don't act like these things of
16 value are unrelated to Menendez's promises or his official
17 position. They act like they have something to hide.

18 Because this is a new section, this might be a good
19 time for a break.

20 THE COURT: 10 minute, ladies and gentlemen.

21 (Jury excused)

22 THE COURT: Let me see counsel at sidebar very
23 briefly.

24 (At the sidebar)

25 THE COURT: I'm just going to ask once again that

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Summation - Mr. Monteleoni

1 counsel have a game face on. Don't show skepticism,
2 disapproval or approval, for that matter, of what a lawyer is
3 saying. Game face for everyone. Thank you.

4 (Recess)

5 (Jury present)

6 THE COURT: Mr. Monteleoni, you may continue.

7 MR. MONTELEONI: Thank you, your Honor.

8 So as we left off before the break, the next reason
9 that you know that there was a corrupt quid pro quo is the
10 secrecy. Look at how Nadine reaches out to Daibes about
11 getting her mortgage payment here.

12 After Menendez calls her, she says, I just got a phone
13 call asking me to give you a call. A phone call from who?
14 Well, from Menendez. But why not just say it. Daibes and
15 Menendez have been friends for years. Why not just tell Daibes
16 that Bob told her to call. Because she knows Menendez wants
17 his fingerprints off it. And Daibes, of course, understands
18 this perfectly.

19 Why do Daibes and Menendez want Menendez's
20 fingerprints off of it? Because it's part of a corrupt quid
21 pro quo and because they don't want to get caught.

22 The secrecy isn't just Nadine's idea. It comes
23 straight from Menendez. Here, in September of 2019, Nadine
24 wants her next bribe check. She wants to follow up with
25 Daibes, but she knows she has to clear it with Menendez if

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Summation - Mr. Monteleoni

1 she's going to text Fred. And what does Menendez tell her?
2 Wait. Don't text Fred. But Nadine still really wants her
3 check. I really want my check. So, she asks Menendez again,
4 let me know if I should text Fred. And again, she wants to
5 text Fred, but needs permission. Please let me know if I
6 should text Fred. This sequence is happening within minutes of
7 each other. Nadine's really following up. What does Menendez
8 say? No. You should not text or e-mail. He doesn't want this
9 in writing because these aren't consulting checks, they're
10 bribe checks. And he knows it. And that's one more reason
11 that you know it. This message alone is devastating evidence
12 of Menendez's consciousness of guilt. His awareness that
13 putting something in writing about the checks could create
14 evidence of a crime.

15 It also shows that Menendez was calling the shots. As
16 you see from this sequence, Nadine needs to get his permission,
17 and she needs to get his instructions before reaching out to
18 demand more bribe payments, even when these payments are
19 supposedly for her job about her consulting services.

20 But they don't stop with the secrecy there. She says
21 she sent the picture of the guy who orders the elliptical. If
22 this elliptical is a totally innocent gift of friendship from
23 Hana, why not just use his name? Why use code? Because it's a
24 bribe. The lady who gave me the scarf. Again, why not just
25 say Mai when you're texting to Menendez. Because they're a

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1 part of a criminal conspiracy with her.

2 Hana and Daibes do the same thing. Our friend would
3 like to have dinner on Thursday night. This is Menendez. But
4 when Daibes texts Hana, he's "our friend." Giving the perfect
5 amount of deniability for when Hana then forwards that text to
6 Helmy, which you can see he does minutes later.

7 This kind of secrecy is another reason why you know
8 that they know that there is a corrupt quid pro quo. Why not
9 mention Menendez's name? Why take so much care to avoid
10 putting it in texts? You know why. Because they know these
11 are bribes.

12 And that brings us to the next reason why you know
13 there was a corrupt quid pro quo. After Menendez finds out
14 about the investigation, he lies. He pretends he didn't know
15 about any of this.

16 Let's start with the checks. You remember this
17 PowerPoint presentation presented to the U.S. Attorney's
18 Office. Well, he has his lawyers say that he didn't know about
19 that first check, even though Daibes handed it to him. For the
20 second check, again, he had his lawyers say he didn't know
21 anything about it, even though Nadine told him all about how
22 much she wanted it on her way to getting it, so much that, as
23 we've just seen, he told her not to put it in writing. And
24 then for the third check, he had them say that he didn't know
25 about that one either, even though that's the one that Daibes

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1 offered to hand him.

2 Remember, he didn't have his lawyers say he knew about
3 the checks and they were fine because they were just legitimate
4 consulting payments that have nothing to do with any quid pro
5 quo. He didn't have his lawyers say there's no problem with
6 picking up the first check from Daibes because it wasn't part
7 of a quid pro quo. No, he had his lawyers say he didn't know
8 about the checks at all. A complete lie. Because he knew it
9 was part of a quid pro quo, he knew they were bribes.

10 It wasn't just the checks. Same thing with the
11 mortgage company payment. He had his lawyers say he didn't
12 know anything about it and that it was a loan. But that wasn't
13 true either. Nadine told him about the mortgage payment when
14 she got back from a trip with Menendez, just like she had told
15 Daibes she would. And then Menendez followed up to make sure
16 that she followed up with Daibes to get that payment.

17 And let's be clear. There is no reason a loan cannot
18 be a bribe. If there had been an agreement that Hana would get
19 paid back, a 2 years zero interest loan would still be a bribe,
20 would still be a thing of value, if it was made as part of a
21 quid pro quo. But here it wasn't even a loan. How do you know
22 that? Because Nadine put that in writing.

23 Nadine here is deducting the amount of that mortgage
24 company payment, that's the top red box, from the amount that
25 she is saying that Hana has to pay her as part of the paychecks

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1 she's wanted. She's deducting the payment from the paychecks
2 she wants. Obviously, Nadine is not planning on paying her
3 paychecks back. So, by deducting the mortgage company payment
4 from the paychecks, she's saying she's not planning on paying
5 that back either.

6 This was never a loan. It was a bribe. A bribe that
7 Menendez lied about, pretending he didn't know anything about
8 it, when he very clearly did. But there's more.

9 Remember those financial disclosure forms? So those
10 were lies, too. Menendez had to file financial disclosure
11 forms because the public has a right to know where public
12 officials are getting their money. This is part of the basic
13 transparency that our laws require. And once he married
14 Nadine, he had to report what she received.

15 So, when he received a kilo of gold in October 2021,
16 from Fred Daibes stopping by with gold and doughnuts like we
17 talked about, he had to disclose that as income. If it was a
18 gift, he would have gotten permission from the ethics committee
19 and disclose it as a gift. Did he do that? No. What did he
20 do instead?

21 Well, in early 2022, he and Nadine were getting ready
22 to sell the gold. And you heard why. They wanted to pay down
23 their mortgages so that he could either buy a new house or
24 build a new house, but you can't buy a house with gold bars.
25 You can't pay a construction company with gold bars. They had

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1 to get the money into their bank accounts. They had to go into
2 the financial system, but there is a problem. Putting money
3 from the sale of gold would create a paper trail showing that
4 they received tens of thousands of dollars. A paper trail that
5 risks raising questions about where that gold and money came
6 from.

7 So, what did Menendez do? He went to the ethics
8 committee, but he didn't tell them he had gotten this gold in
9 October 2021 as a gift and it was fine because it wasn't part
10 of a quid pro quo. No. He knew he had to hide how he had
11 really gotten the gold, so he claimed that he had just learned
12 about it more than a year after his marriage to Nadine, and
13 that it was old gold from his wife's family before their
14 marriage. Those were lies. As we've seen, it was from Fred
15 Daibes.

16 Now, like the best lies, this is built around a kernel
17 of truth. Nadine had gotten some gold in some form from her
18 family in the past. But the gold that Menendez was Googling on
19 October 18, 2021, wasn't Tabourian family gold. It was gold
20 that Daibes had just stopped by with. Family gold is just
21 where they got the idea for the lie.

22 And see right there? How he told Shannon Kopplin, the
23 ethics counsel, how he needed to use it to pay down the
24 mortgage. That's why he was disclosing it at the time. But he
25 doesn't stop at lying to the ethics counsel. He then filed an

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1 amended form for 2020, a form trying to build a paper trail
2 that this was Nadine's old family gold from before the
3 marriage.

4 So when the time to come to file for 2021, he didn't
5 list the gold that Daibes gave him that year as income, and he
6 didn't list it as a gift. He didn't list that he had received
7 it at all.

8 (Continued on next page)

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Summation - Mr. Monteleoni

1 MR. MONTELEONI: And he said this form was complete
2 and accurate. He lied. He lied to hide the fact that he and
3 Nadine had gotten a kilo of gold from Fred Daibes. That's
4 another reason you know that there was a corrupt *quid pro quo*.

5 Here's one more.

6 Everything that we've talked about is just one part of
7 the broader scheme, the broader pattern of corruption you've
8 seen from the start to the finish of this case. McKinney isn't
9 the only government official that Menendez reached out to on
10 behalf of someone who was paying him. I'll go over the others
11 in a minute, but when I get to the New Jersey attorney general
12 conduct, you can ask yourself. If Menendez is reaching out to
13 the attorney general of New Jersey on behalf of someone who
14 just happens to be paying his girlfriend, how can it be a
15 coincidence that he's doing the exact same thing with Under
16 Secretary McKinney on behalf of someone who just happens to be
17 paying her too?

18 And when we get to the New Jersey U.S. Attorney
19 conduct, how can it be a coincidence that he's trying to help
20 the case of someone who just happens to be paying him when he's
21 also trying to help the business here of someone who also just
22 happens to be paying him?

23 When we get to Qatar, when Menendez is trying to
24 please people he thinks are connected to a foreign government
25 that might benefit the business of someone who just happens to

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1 be paying him, how can that be a coincidence when he's trying
2 to do the exact same thing with the government of Egypt?

3 Common sense tells you when Menendez did the same
4 thing again and again, it wasn't a coincidence. It was a
5 corrupt *quid pro quo* -- this for that, money, gold and
6 valuables from Hana and Fred Daibes for promises of official
7 acts to protect and enrich Hana and Daibes and their
8 associates, another reason that you know it was a corrupt *quid*
9 *pro quo*.

10 So that's six reasons, six reasons that you know it
11 was a corrupt *quid pro quo*, six reasons that you know the third
12 and fourth elements are proven. Six reasons that you know of
13 Menendez is guilty of Count Five. Six reasons that you know
14 that Hana and Daibes are guilty of Count Six.

15 Let me also talk about something called venue for a
16 minute. It's not an element. It's something that the judge
17 will instruct you has to be proven. Venue, unlike the
18 elements, only has to be proven by a preponderance of the
19 evidence. It doesn't have to be beyond a reasonable doubt,
20 just that it's more likely than not. And venue just means that
21 for some essential part of the offense, something that's part
22 and parcel of the core offense conduct, whether that's an
23 element or something that's part and parcel of an element, it
24 has to have happened in the Southern District of New York.
25 Doesn't have to be known to all defendants, but it does have to

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1 be foreseeable. They have to foresee that an act that's part
2 and parcel of the offense is going to be done in the district.

3 So there's plenty of bases for venue on these counts,
4 but here's one obvious one. When Menendez and Nadine are in
5 Mr. Chow in Manhattan at the dinner in June that we saw, Hana
6 pays for their dinner. So that's actually a thing of value
7 right there. That's enough, but also, when Hana from Mr. Chow
8 sends Shawky a WhatsApp message that's scheduling that July
9 meeting and dinner, that July meeting's right before Menendez
10 sends that promise about the tank ammunition, that's part and
11 parcel of Menendez's promises and of what leads to Menendez's
12 promises. So that right there is also enough for venue without
13 even getting to the other bases like Khorozian selling gold in
14 New York for Nadine.

15 Then, finally, so for this count and for several of
16 the other counts that Fred Daibes is charged with, you're going
17 to be called upon to find that he was on bail at the time of
18 the offense. So here, there's a stipulation that you can look
19 at, where the parties agree that he was released, since back in
20 November 2018. That covers the time period of what we've been
21 talking about that Daibes did in these offenses, so this is
22 proven for Count Six. I'm not going to keep mentioning it,
23 since it's the same for each count, but this is also proven for
24 the other counts that Daibes is charged with, where you're
25 going to be asked to find whether or not he was on bail at the

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1 time.

2 So we are done with Count Five and Count Six.

3 Menendez, Hana and Daibes are guilty. So those are
4 among the longest counts. I'm not going to spend as much time
5 on those three others.

6 The next three counts in particular are going to go
7 much more quickly. So let's go to the next count.

8 Count Seven, honest services wire fraud. This is
9 against Menendez, Hana and Daibes. Remember, this also relates
10 to the Egypt part of the scheme. Honest services fraud is a
11 federal law that makes it a crime for an elected official to
12 deprive the people, the citizens he represents, of his honest
13 services. And providing people with honest services means you
14 can't take official actions in return for bribes. So we've
15 already covered the key evidence for this part of the scheme.
16 I'm going to go much faster here.

17 The first element is that there's a scheme to defraud
18 the public of its right to the honest services of Menendez as a
19 U.S. senator and the chair or ranking member of the SFRC
20 through bribery. Here, the same evidence we were just looking
21 at -- that Menendez is a public official, that he received
22 things of value from Hana and Daibes and he did so as part of a
23 corrupt *quid pro quo* with Hana and Daibes in exchange for
24 promises to take official acts -- those satisfy this element
25 for Count Seven. I expect that Judge Stein will instruct you

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1 the same instructions on *quid pro quo* apply to this element of
2 honest services fraud. This count is based on the same *quid*
3 *pro quo* as those counts we just looked at, Counts Five and Six,
4 so the same proof that we just went through proves this element
5 too. So we're done with the first element.

6 The next element is intent to defraud. I expect Judge
7 Stein will instruct you that this can include things like
8 hiding things of value. So was there intent to defraud here?
9 Of course there was. Remember the secrecy that we were just
10 talking about? All of that is evidence of intent to defraud.
11 The sham job, the lies on the financial disclosure forms, the
12 lies to the U.S. Attorney's Office for the Southern District of
13 New York, that's all proof of Menendez's intent to defraud.

14 And it wasn't just Menendez. All three defendants
15 were all trying to hide the bribe payments. Menendez lied on
16 the disclosure forms, told Nadine not to text or email and
17 helped her set up the sham company to collect the paychecks.
18 Hana paid that sham company paychecks for a bogus job, and
19 Daibes handed off some of those checks for the bogus job. And
20 the whole job, remember, was a sham but didn't disguise the
21 fact that Hana was paying Menendez, and Hana and Daibes both
22 knew Nadine wasn't planning on doing real work. They all had
23 intent to defraud. That element is proven.

24 That takes to element three. The scheme must have
25 involved a material misrepresentation, false statement, false

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1 pretense or concealment of fact. Was there here? Of course
2 there was. The same proof of intent to defraud proves that
3 here -- the false financial disclosure forms and the efforts to
4 set up the sham company for Menendez; Hana and Daibes, the
5 bogus paychecks that Hana issued and that Daibes delivered, all
6 to hide from the public that they were not receiving the honest
7 and faithful services of Robert Menendez.

8 Brings us to the last element of Count Seven, an
9 interstate or international wire. That means a wire that can
10 include a phone call or a text message across state lines.
11 This one's easy. So hana's right here in Midtown Manhattan,
12 June 2018, and he sends WhatsApp messages to Shawky, setting up
13 a meeting and a dinner with Menendez in July. I expect that
14 Judge Stein will instruct you that the wire itself doesn't have
15 to contain any fraudulent representation, doesn't have to
16 contain any request for money. All that's needed is that it
17 furthers or assists in carrying out the scheme. And that's
18 what these messages do.

19 They set up the July meeting and dinner. And again,
20 as you heard, that's not just any meeting or dinner. That's
21 the meeting or dinner right before Menendez promises to do a
22 speedy approval of that tank ammunition sale. So those
23 WhatsApp messages from Mr. Chow setting up those meetings are
24 wires in furtherance of the scheme. OK, they're wires, but did
25 they go interstate?

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1 Yes, they did. They were actually WhatsApp messages,
2 and WhatsApp messages are all processed by servers located out
3 of New York State. You see the stipulation here establishing
4 that. So any WhatsApp message from New York is going to have
5 to be interstate. So those wires right there are all you need.
6 Last element for honest services wire fraud is proven, and that
7 wire is enough for venue for this count since it was sent from
8 right here in Manhattan, from midtown.

9 So we're done with Count Seven. Menendez, Hana and
10 Daibes are guilty.

11 Let's look at the next count.

12 Count Eight, extortion under color of official right.
13 Just against Menendez. This charge, again, relates to the
14 Egypt part of the scheme. And extortion under color of
15 official right essentially means Menendez used his official
16 position to get payments he wasn't otherwise entitled to.
17 Again, we can do this one quickly.

18 Public official, that's undisputed.

19 Let's go to the next element. Menendez must have
20 obtained property for himself or another person other than just
21 the salary and benefits he was entitled to as a senator. So
22 here, the exact same proof of a thing of value that we
23 discussed for Count Five and Count Six proves this element too.
24 We don't have to go over it again.

25 The third element essentially requires a *quid pro quo*.

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1 I expect the judge will instruct you *quid pro quo* here has the
2 same definition as it does for honest services fraud. And so
3 that means the same proof that we were just talking about for
4 Counts Five, Six and Seven satisfy this element too.

5 Now this fourth element, the interstate commerce
6 element, just has to prove that interstate commerce or an item
7 moving in interstate commerce was delayed, obstructed or
8 affected in any way or degree. And I expect the judge will
9 instruct you this effect can be minimal. So if a single
10 payment obtained by a defendant went through interstate
11 commerce, that's enough.

12 Here, that's easy. If you look here, when IS EG Halal
13 was paying to make Nadine's mortgage current, they sent a wire
14 transfer to John Moldovan, the lawyer, for him to essentially
15 write the cashier's check from New Jersey to California in a
16 wire that is processed by the Federal Reserve Bank of New York.
17 So that is a payment through interstate commerce.

18 It's not the only one, of course. When Vasken
19 Khorozyan went to Manhattan to sell gold bars and brought a
20 check back to New Jersey for Nadine, that's also an effect on
21 interstate commerce, but just one is all you need. So this
22 element is proven as well.

23 Venue is also easy. The Mr. Chow payment or the
24 Vasken Khorozyan selling the gold in New York, either one of
25 those is enough.

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1 Menendez is guilty of Count Eight. Menendez is guilty
2 of extortion, and he, Hana and Daibes are all guilty of bribery
3 and honest services fraud. Menendez was entrusted with
4 oversight of our nation's foreign policy and all the powers
5 that come with it, and he sold all of that trust and all of
6 that power for the benefit of Hana and of Egypt for money and
7 gold, money and gold that Hana and Daibes, who both wanted to
8 share in the profits of a monopoly that Egypt gave Hana, they
9 were all too willing to pay.

10 Let's move on from Egypt to another part of the
11 scheme. Count Nine, this is honest services fraud. This
12 relates to Menendez's promise to disrupt the New Jersey
13 attorney general's prosecution and investigation of José
14 Uribe's associates. This count is against Menendez and Hana.
15 We haven't talked much about this part of the scheme yet, so
16 this is one of the counts we're going to spend more time
17 discussing.

18 Let's look at the first element, which is what we're
19 going to spend the most time on -- scheme or artifice to
20 defraud. Essentially, was there a corrupt *quid pro quo* for
21 promises of official action?

22 So before we get started, I want to point out one
23 little aspect of the law that differs here from the bribery
24 charge we talked about. I expect that Judge Stein will
25 instruct you that for honest services fraud, if Menendez

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1 promised or agreed to pressure a state official, not just a
2 federal official, that can be honest services fraud if all the
3 other elements are satisfied. So that means that if you find
4 that Menendez attempted and promised to advise or pressure
5 Gurbir Grewal, then that can be a component of a corrupt *quid*
6 *pro quo* even if he was a state official. In fact, if he just
7 promised to advise or pressure Grewal but never even tried.

8 So let's start. How do you know that there was a
9 corrupt *quid pro quo* for promises of official action in this
10 part of the scheme?

11 Well, each of the same reasons that prove the *quid pro*
12 *quo* for the Egypt counts applies here -- the timeline, special
13 treatment, the things of value, the secrecy, the lies and the
14 scheme.

15 Let's go through each of them.

16 The first reason you know is the timeline. Now, this
17 timeline is, if anything, even more overwhelmingly obvious than
18 the last. Take a look at just a few key moments. January 15,
19 2019, this is after Menendez and Nadine broke up for a month or
20 two at the end of 2018, but they're back together now.
21 Nadine's lost her car in an accident in December, a month
22 before this. She's telling Hana she doesn't have a car.
23 January 15. What does Hana do? Well, the next day he starts
24 sending her information about the Elvis Parra prosecution.

25 Is Hana the only one who knows that Nadine needs a

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1 car? Of course not. Look at this. Menendez and Nadine went,
2 also in January, and test drove a Mercedes C-300, but the
3 prices are too high monthly to finance, and Menendez knows
4 this. He knows she can't afford it. You see in this message,
5 he tells Nadine to ask her friend who knows somebody in the
6 business.

7 What kind of car does she want? A Mercedes-Benz C-300
8 convertible.

9 Well, what does Menendez do? He sees how much he
10 could sell another car for, and he looks at how much a Mercedes
11 C-300 costs. So he knows what she can afford and what she
12 can't afford.

13 What does he do next? He meets Nadine at the auto
14 body shop to empty her old car out, and the very same day, he
15 invites Uribe and Hana to a meeting. This is not a
16 coincidence. He invites them to solve the very same problems
17 they spent the last few days on. Nadine wants a new Mercedes.
18 Menendez invites Hana and Uribe over the very same day he and
19 Nadine go to the auto body shop so that he can use them to get
20 a car for Nadine? How? By promising to intervene in Elvis
21 Parra's case.

22 How do you know that? Menendez, Nadine and Hana have
23 the meeting, and hours after the meeting, Hana is resending
24 Nadine info about the Parra case. He knows what they talked
25 about at this meeting. Parra's case. Nadine doesn't respond

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1 and say, what's this about? Why are you sending me this? She
2 knows.

3 And what happens just two days after that meeting?
4 Menendez calls Nadine's flip phone, January 29, 2019, 11 a.m.

5 Talk more about the flip phone later, but here, he
6 calls it and he asks for the info about what case he should
7 intervene into. How do you know that? You can see it.
8 Immediately after getting off the phone with Menendez, Nadine
9 calls Hana. Hana asks Parra for Parra's address. Hana gets
10 that and sends it to Nadine.

11 What does Nadine do? She asks what the charges are.
12 And look what Hana sends -- the case number and a very basic
13 description that it's a small case. He doesn't send evidence
14 of discrimination. He doesn't send evidence that anyone has
15 been treated differently than anyone else. He doesn't send any
16 of that. Why? Because Menendez couldn't care less about that.

17 How do you know that? Well, look at what Menendez
18 does. He talks to Nadine on the flip phone for less than two
19 minutes, and then he calls the New Jersey attorney general, the
20 ultimate boss of the law enforcement officers handling Parra's
21 case -- later that same day, just hours after first calling
22 Nadine on her flip phone that day, days after meeting with
23 Hana, less than a week after googling the price of the car
24 Nadine wants. What you didn't see in that timeline was any
25 evidence of any research Menendez did into whether there was

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1 any discrimination in Parra's case at all. He didn't make the
2 call to Grewal based on careful consideration of evidence of
3 discrimination. He made the call based on careful
4 consideration of the Google search results for how much does a
5 Mercedes C-300 cost.

6 By the way, why is Menendez looking to Nadine as the
7 one to send him information about this case? Menendez has a
8 robust staff. He has professionals to handle issues about
9 policy. He could look -- he could ask them to look into
10 criminal justice issues. What does Nadine know about the
11 policy issues involved in insurance fraud prosecutions? The
12 only reason she's involved, the only reason he is communicating
13 directly with her about this is the scheme.

14 Look what happens right after. Now that Menendez made
15 the call, it's time for Hana to deliver. So Hana goes to Fred
16 Daibes, just two days after the call. Two days after that,
17 what does Nadine think? All is great. I'm so excited to get a
18 car next week, a car that she couldn't afford, the car that
19 Menendez knew that she couldn't afford. All of a sudden she's
20 going to get it. Why? Because Menendez promised to interfere
21 in a criminal prosecution in exchange for Hana's promises of a
22 car.

23 But the same problem that we saw in the Egypt part of
24 the scheme comes up. Hana's not following through. Remember,
25 he hasn't gotten his monopoly yet, so he's still broke. So

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1 what does he do? Hana tries again to get Daibes to step up
2 with the car. But Daibes isn't doing it. So look what happens
3 next. Look who sets in motion what's going to lead to Nadine
4 actually getting that car. Look who's involved in this. Watch
5 this part carefully.

6 First, José Uribe says to Bienvenido Hernandez, tell
7 them that we're ready. Hernandez and Uribe both have an
8 interest in the investigation. We're ready to pay the
9 necessary bribe. Well, later that day, Andy Aslanian, Ana
10 Peguero's lawyer, and close with Uribe, calls Nadine late at
11 night, talks for 25 minutes, starting 11:21 p.m. He's laying
12 out to Nadine that it's not just Parra. The deal is to kill
13 and stop all investigation, just like Uribe has been texting
14 about with Hana since last year. And that's why Nadine hasn't
15 gotten her car yet.

16 How do you know that that's what Andy said? Well,
17 look what happens next. The next day Menendez calls Nadine.
18 They don't talk for long, but you know exactly what they talk
19 about. How? Look what happens when they get off the phone.
20 Nadine calls Hana literally the minute she gets off the phone
21 with Menendez. Menendez calls Michael Critchley literally the
22 minute he gets off that same call with Nadine. What do
23 Critchley and Hana have in common? Elvis Parra's case.

24 This, by the way, this call that you're seeing in this
25 timeline, that's the call you saw Michael Critchley testify

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1 about by video. We'll come back to that.

2 And just like that, Hana is reminding Nadine of what
3 case Menendez is supposed to influence. Now let's see what
4 happens later that day.

5 Nadine checks with Andy Aslanian, and then for the
6 first time in her life, she picks up the phone and calls José
7 Uribe. Talks to him for over 20 minutes at ten at night. What
8 do they talk about? Well, you know just from the timeline,
9 just from the text that they sent: I am real. I will stand by
10 my word. After getting off the phone with her, Uribe gave his
11 word on the call. He promised a car. It's not just Uribe who
12 made promises on the call. Uribe tells Hernandez the next day:
13 I received a call with good news. Let's keep the faith.

14 It's good news for Uribe because Nadine made promises
15 on that call too, promises that Menendez would kill and stop
16 all investigation. And you know from that call with Menendez
17 earlier that day, followed immediately by Menendez calling
18 Parra's lawyer, you know that Menendez knew all about it. And
19 that -- that -- is how the process of Nadine getting the car
20 starts. And it only gets more explicit from there.

21 A few days later, while Uribe's on the phone with
22 Hana, while he's on the call with Hana, he texts Nadine the
23 address of the Mercedes-Benz dealership. So you know Hana was
24 involved with Uribe providing the car because he's literally
25 talking with Uribe as Uribe sets up plans to get Nadine a car.

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1 You know who else knew about it? Menendez. Nadine
2 leaves him a voice message saying she's going to go get a car
3 on Monday in Edison. She's going to go see if Will is going to
4 step up and do anything on Monday, but even if Will doesn't
5 help, Uribe is. So she's definitely going to get a car on
6 Monday -- Nadine's words to Menendez. She doesn't explain why.
7 She doesn't have to. He already knows. Common sense and the
8 evidence tell you that Nadine and Menendez have already talked
9 about the plan for Uribe to get Nadine her car. Menendez knows
10 Uribe's providing the car and he knows that Will has offered to
11 help, but they don't know if he's going to step up and actually
12 do it.

13 I can talk more about the car and how Menendez knew
14 that Uribe was providing it, but for now I want to go to one
15 other part of the timeline that makes crystal clear -- crystal
16 clear -- that there was a corrupt *quid pro quo*. That's the
17 summer and fall of 2019. Let's look.

18 So Det. Lopez is back asking to talk to Peguero.
19 Uribe reaches out to Nadine right away. Nadine and Uribe meet,
20 and she, of course, tells Menendez, because he's a critical
21 part of the scheme. And you see her throughout telling
22 Menendez what she's doing. And the day after the meeting, once
23 Uribe has explained what is going on, Uribe starts following
24 up: I don't want these people to bother my Ana. Please help.

25 And Nadine makes very clear what she's going to do to

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1 help and who is going to do it: I will address it first thing
2 tomorrow morning or tonight depending on when he is home -- he,
3 Menendez, the one with the power. We need to make things go
4 away. We need to move fast.

5 How is Nadine going to move fast? Through Menendez
6 making calls. He will be home first thing tomorrow. I will
7 address it first thing tomorrow and have the phone calls go
8 out.

9 Phone calls to do what? To stop this. Promises
10 Menendez will use his power and influence by picking up the
11 phone and stopping a criminal investigation. Did Menendez know
12 about this? Of course he did. After meeting up with Nadine
13 that night, the night that those texts were sent, he googles
14 NJDCJ, the end of Det. Lopez's email address, New Jersey
15 Division of Criminal Justice. He's figuring out who is
16 investigating. He's figuring out whose boss he has to call.
17 He's figuring out who he's going to have to lean on.

18 Actions speak louder than words. And you know when
19 Menendez's actions speak even louder? Look what happens the
20 next month.

21 September 3, one month later, by this point, Menendez,
22 Nadine and Uribe have met. Uribe's kept paying for the car,
23 but nothing has been done. So Uribe, he reaches out and he
24 puts the whole *quid pro quo* in writing. Please don't forget
25 about me. I will never forget about you. You see what he's

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1 saying here. Please stop the investigation. I will keep
2 paying for the car. *Quid pro quo*. This for that. Car
3 payments for Menendez's promise to disrupt a criminal
4 investigation.

5 How's Nadine respond? You will never be forgotten.
6 That's a promise. It is a promise. It's a promise of an
7 official act. And that's exactly what Uribe says. He says: I
8 need peace. He's saying I need you to deliver on that official
9 act. I need you to stop this investigation.

10 But how do you know that Menendez knows about this
11 *quid pro quo*? He tells you with his actions the next day. The
12 next day, after Uribe says please don't forget about me, I will
13 never forget about you, Menendez is on the phone with Grewal,
14 summoning him to his office. Actions speak louder than words,
15 and Menendez's actions are shouting from the rooftops. Uribe
16 tells Nadine I'll keep paying for the car if you stop the
17 investigation, and Menendez is on the phone the very next day
18 trying to do just that.

19 And it's not just a call. On September 6, three days
20 after Uribe has sent the please don't forget about me, I'll
21 never forget about you text, Menendez has Grewal in his office.
22 And look what happens right after. Menendez meets with Uribe
23 to report back. On my way to big meeting with the *amigo*.

24 What does Menendez tell Uribe at the big meeting?
25 Menendez tells Uribe it's very positive, but not final. That's

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1 because he knows Uribe's not just looking for a meeting. He's
2 looking for an official act. He's looking for Menendez to make
3 the investigations go away. And that's exactly what Menendez
4 is promising Uribe he's trying to accomplish.

5 One more part of the timeline.

6 Uribe keeps following up, asking for peace, because he
7 doesn't just want a meeting. He wants results. Here he is
8 saying he's going to keep following up until he gets results:
9 I always text you on Monday in case you have an update. I just
10 need peace.

11 Look what happens when Nadine gets the message. She
12 reads that message the next day, at 11:37 a.m. Who does she
13 tell after reading that text? She talks to Menendez about an
14 hour and a half later. You know that during that conversation
15 Nadine is telling Menendez he needs to reassure Uribe that he's
16 kept his end of the bargain, because Uribe's not going away,
17 otherwise Uribe might stop the car payments.

18 So what does Menendez do? Next block of office time
19 Menendez gets he calls Uribe, basically assumes he learns that
20 Uribe is going to keep following up until he gets results.

21 What does he tell Uribe? Menendez tells Uribe what he
22 wants to hear. You can read it from the text. I just got a
23 call, and I'm a very happy person. God bless you and him
24 forever. You and him. Uribe knows this isn't just a scheme
25 with Nadine. This is a scheme with Nadine and Menendez.

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1 And look what Uribe does. He says he's going to put
2 the car into auto pay, and then two minutes later -- two
3 minutes later -- he says: I have so much peace. *Gracias adios*
4 and to you guys. *Quid pro quo*. This for that. Car payments
5 for promises of disrupting a criminal investigation.

6 As if it's not clear enough, look who he thanks.
7 Uribe thanks three people: God, Nadine and Menendez. You know
8 from looking at this evidence this is just what happened. Even
9 based just on the evidence cited in this chart, Government
10 Exhibit 1303, the *quid pro quo* is proven against Menendez and,
11 it's proven against Hana. Even if there were nothing more than
12 this, the *quid pro quo* would be open and shut. But again,
13 there's so much more that it might make sense to do tomorrow.

14 THE COURT: Ladies and gentlemen, be here tomorrow at
15 9:30. There are no more legal issues that I'm aware of that
16 the parties can raise. So if you're here at 9:30, we'll
17 continue with Mr. Monteleoni's summation, and then we'll go
18 into one of the defense summations.

19 9:30. Thank you. Keep an open mind.

20 (Jury not present)

21 THE COURT: Who's giving the first defense summation,
22 on behalf of whom?

23 MR. FEE: I am.

24 THE COURT: Mr. Fee. And how long is that going to
25 be, approximately?

O78Wmen6

Summation - Mr. Monteleoni

1 MR. FEE: Three and a half hours.

2 THE COURT: Thank you.

3 I'll see everybody tomorrow at 9:30.

4 MR. FEE: Thank you.

5 (Adjourned to July 9, 2024, at 9:30 a.m.)

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